United States Court of Appeals

for the Second Circuit



APPELLANT'S APPENDIX

75-7152

~~75-7121~~

ORIGINAL

In The

United States Court of Appeals

For The Second Circuit

MARION ROSETTE,

Plaintiff-Appellee,

vs.

RAINBO RECORD MANUFACTURING CORPORATION and HAROLD E. MARKOWITZ AND JACK BROWN, doing business as RAINBO RECORD COMPANY, a partnership,

Defendants-Appellants.

UNITED STATES COURT OF APPEALS
FILED
JUN 16 1975
SECOND CIRCUIT

On Appeal from the United States District Court for the Southern District of New York

B

P/S

APPENDIX FOR DEFENDANTS-APPELLANTS

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UNITED STATES DISTRICT COURT

Jury demand date:

JUDGE WERKER

~~JUDGE GURFEIN~~

D. C. Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
MARION ROSETTE VS ~~PLAYTIME RECORDS, INC.~~ "RAINBO RECORD MANUFACTURING CORPORATION" HAROLD M. MARKOWITZ AND ~~Wm~~ JACK BROWN, d/b/a RAINBO RECORD COMPANY, A ~~Partnership~~ PARTNERSHIP (amended 2-6-68)	For plaintiff: Zissu, Marcus & Stein 292 Madison Ave. N. Y. 10017 683-5320 221-75 For defendant: Alfred Jaffe [illegible] Wall St., NYC, 10005 Hofer, Rich and Grubman 221 West 57th St. NYC 10019 Tel: Ju 2-5030

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J. S. 5 mailed X	Clerk	1-15-66	Zissu	15 -	-
		1-15-66	U.S. Rec'd		15 -
J. S. 6 mailed	Marshal				
Basis of Action: COPYRIGHT INFRINGEMENT	Docket fee				
	Witness fees				
Action arose at:	Depositions				

66 CIV 3864 MARION ROSETTE VS PLAYTIME RECORDS, INC. 66 CIV 3864

DATE	PROCEEDINGS	Date Order or Judgment Entered
15-66	Filed complaint and issued summons	1
15-66	Filed affdvt. for 30 day summons	2
19-66	Filed summons & return, served deft, by Jack Brown-11-30-66-Cen'l Dist. of Calif.	3 X
24-67	Filed deft's affdvt. & notice of motion to dismiss complaint-ret. 3-14-67	4
24-67	Filed deft's memorandum of law in support of its motion	5
13-67	Filed stip adjourning deft's motion to 3-21-67	6
0-67	Filed stip. adjourning deft's motion to 3-28-67-	7
7-67	Filed affdvt. of Marion Rosette in opposition	8
7-67	Filed pltff's memorandum in opposition	9
12-67	Filed supplemental affdvt of Jerold L. Couture with pltff's Exhibit #1 attached	10
7-67	Filed answer of Alfred Jaffe to supplemental affdvt.	11
7-67	Filed memorandum opinion #33,614--The instant motion is hereby marked off the calendar without prejudice pending discovery to be concluded no later than 60 days from the date of the filing of this memorandum-decision. Upon the conclusion of such discovery proceedings, the motion may be restored on notice to the general motion calendar. It is suggested that, upon the restoration of said motion, counsel should address themselves to the question, inter alia, of the applicability of the various subdivisions of Sec.302-e.g., whether statutory or common law copyright infringement constitutes a"tortious act" within the meaning of that section.So ordered--Herlands,J.-mailed notice	12
21-67	Filed pltff's interrogatories	13
25-68	Filed pltff's affdvt & notice of motion to amend summons etc. ret. 1-30-68	14 X
25-68	Filed pltff's memorandum in support of its motion	15
30-68	Filed memo endorsed on motion filed 1-25-68--motion granted on default-submit order-Murphy, J.	16
6-68	Filed order amending title of action to read as indicated on front of docket sheet--Murphy, J. mn	17
5-68	Filed Consent Order - that the order of this Court, dated February 6th, 1968 be and the same hereby is amended to read as indicated - Murphy, J.	18
6-68	Filed Pltff's True copy of Order	19
6-68	Filed Pltff's Interrogs.	20
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8-68	Filed Defs. Answers to Interrogs.	22
8-68	Filed Defts. Answers to Interrogs.	23
29-68	Filed Defts. Notice to restore motion and stipulation ret. August 20th, 1968 10 AM	24
5-68	Filed Pltffs. Interrogs. (Rainbo Records Co.)	25
5-68	Filed Pltffs. Interrogs. (Rainbo Records Mfg. Co.)	26
19-68	Filed stip adjourning defts motion to dismiss to 9-10-68.	27
23-68	Filed deft.(Rainbo Record Mfg.) answers to interrogs. of pltff.	28
23-68	Filed deft.(Rainbo Record Co.) answers to interrogs of pltff.	29
4-68	Filed Supplemental Memorandum of Law in Support of Defts. Motion to Dismiss	30
9-68	Filed Pltffs. Supplemental Memorandum in Opposition to the motion	31
18-68	Filed Memo End. on motion filed Feb. 24, 1968 -motion to dismiss for lack of jurisdiction is denied. So ordered -Bryan, J. mn	32
30-68	Filed stip and order that time of defts to answer complaint is extended to 1-2-69. So Ordered-Frankel, J.	33
9-69	Filed defts' ANSWER.	34
9-69	Filed stip and order that the time of defts. to answer complaint is extended to 1-9-69. So Ordered -Herlands, J.	35
14-69	Filed pltff's interrogs. to deft.Rainbo Record Mfg.Corp.	36
14-69	Filed pltff's interrogs. to defts.Markowitz and Brown.	37
1-69	Filed deft.(Rainbo Record Mfg.) answers to pltff's interrogs.	38
1-69	Filed deft. (M.E.Markowitz & J. Brown) answers to pltff's interrogs.	
17-69	Filed pltffs. Notice to take deposition of Jack Brown 7-1-69	

DATE	PROCEEDINGS
[illegible]	Filed Pltffs. Notice to take deposition of Rainbo Record [illegible] 2-1-69
-14-69	On call for revisn re G. R. [illegible] before SUGARMAN, Ch.J.
Jun.25-69	Filed order that pltff shall file note of issue within 120 days or [illegible] dismissed. Sugarman, Ch.J. m/n
Jul. 2-69	Filed deft's affidavit & notice of motion to vacate notice (Deposition) ret.
Jul. 8-69	Filed stip that deft's motion ret. 7-10-69 is adj. to 7-17-69.
Jul.16-69	Filed pltff's memorandum in opposition to deft's motion ret.7-17-69.
Jul.16-69	Filed affidavit of Jerold L. Couture in opposition to deft's motion.
Jul.17-69	Filed reply affidavit of Harry S. Clyne. (Filed in court.)
Jul.18-69	Filed memo-endorsed on deft's motion filed 7-2-69: It is directed that the deposition be noticed for and taken with twenty (20) days & that the scope of the exam. be limited to questions not previously answered by interrogs. Settle order on notice. Bonsal,J.
Aug.4-69	Filed order that the deft's motion be granted to the extent that the depositions of defts. upon oral examination be limited to questions not previously answered & that said depositions be taken within 20 days of the date of this order.--Bonsal,J.- mailed notice.
Oct.22-69	Filed pltff's NOTE OF ISSUE and statement of readiness.
Dec 1-69	Filed order pursuant to Cal. Rules 6 & 13.--Sugarman,Ch.J.
Dec 8-69	Filed pltffs designation of trial counsel)
Dec.23-69	Filed deft's designation of trial counsel.
Jan 7-70	Filed deft's affdvt & notice of motion for extension of time
Jan 7-70	Filed memo endorsed on Motion filed this date---Application granted, [illegible] trial order as of this date-So ordered-Motley,J.
2-19-70	Pltff's Pre-Trial Memo - Metzner J.
[illegible]	Filed Pltff's pre-trial memorandum.
[illegible]	Filed Addendum to pre-trial memorandum annexed to pre-trial memorandum [illegible]
[illegible]	Filed Consent Pre-Trial Order ---- Edelstein Ch.J. (out)
[illegible]	Filed Consent Order to change atty of record for defts.
[illegible]	Non-jury trial begun before Judge Gurfein.
[illegible]	Trial cont'd and concluded. Decision reserved.
[illegible]	Filed OPINION #39247...Accordingly, the defts Rainbo Record Manufg. Corp and Jack Brown will account for the period not time barred either by limitation orfailure to file notice of use with respect to each record sold of a copyrighted composition of the Rainbo labels of Carousel and Playtime. Upon such accounting the defts pay to the pltff a royalty of two cents per record so sold and sum of three times thereof. The foregoing constitutes the findings of fact and conclusions of law per to FRCP 52(a). A Master will be appointed to preside over the accounting unless the parties agree to a stipulated sum twenty-one days from the date hereof. Costs are awarded atthis time. Submit judgment on notice. GURFEIN, J.
Apr.12.73	Filed INTERLOCUTORY JUDGMENT. Ordered that Defts, Rainbo Record Mfg Corp, Jack Brown, their officers, agents, etc. are perpetually restrained and enjoined etc., as indicated ordered that Magistrate Martin D. Jacobs is appointed Special Master to take evidence, compute, etc., ordered that Pltff recover from Defts, her costs, disbursements of this suit, to be taxed by Clk as [illegible] Gurfein, J. JUDGMENT ENTERED 4/12/73 Acting Clk. ENT. 4/16/73
Apr 17	Filed Transcript of proceedings dated 11-6-72
Apr 17	Filed Record of transcript of proceedings filed 11-6-72

— Over —

transferred and assigned to the plaintiff any and all rights

JUDGE WERKER

4a

DATE	PROCEEDINGS	
1-11-74	Filed Report of Magistrate Jacobs.	57
1-11-74	Filed plaintiff's Brief after hearing	58
1-11-74	Filed plaintiff's reply brief after hearing	59
1-11-74	Filed defendants' reply post - trial memorandum	60
1-11-74	Filed defendants' post trial memorandum	61
1-11-74	Filed transcript of record of proceedings dated Jan-30, 31, 1974.	62
1-12-74	Filed copy of Report of Magistrate Jabobs with memo endorsed: No objections have been filed to Magistrate Jacobs' excellent report. I have studied it carefully and I confirm it. The Clerk may enter judgment in conformity therewith. It is so ordered. - Gurfein, J. m/n	63
1-31-75	Filed JUDGMENT AND ORDER that defendants are perpectually restrained and enjoined as indicated herein. Ordered that defendants deliver upon oath on or before the 14th day of February 1975, to the US.Marshal at the U.S. District Court for the S.D. of N.Y. all articles indicated herein; that plaintiff recover from defendants the sum of $14,300 with interest from 7-1-1964; that pltf. recover from the defendants Attorneys fees in the amount to be fixed by the Court; that the pltf. recover from the defendants her costs and disbursements of this suit, to be taxed by the Clerk of this Court and that jurisdiction of this suit is retained for the purposes of making any further orders to effectuate this judgment and to determine attorney's fees to be awarded to the pltf. and any further order necessary or proper to be made in final adjustment and settlement of this controversy. -- Werker, J. -- Judgment entered. - Clerk. m/n	64
2-24-75	Filed defendants notice of appeal to the USCA for the 2nd Circuit from final order & judgment entered -- copy to Zissu, Marcus, Stein & Couture, Esqs.	65
		66

posed and wrote the words and music in a musical composition

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

MARION ROSETTE, :

Plaintiff, :

-against- : COMPLAINT

PLAYTIME RECORDS, INC., :

Defendant. :

- x

Plaintiff, by her attorneys, ZISSU, MARCUS & STEIN, for her complaint herein respectfully alleges:

AS AND FOR A FIRST CLAIM

1. The cause of action set forth herein arises under Title 17, United States Code, as hereinafter more fully appears.

2. At all times hereinafter mentioned the plaintiff was, and still is, a citizen of the State of New York and a resident of the City, County and State of New York in the United States, Southern District of New York.

3. Upon information and belief, at all times relevant hereto the defendant was and is a corporation chartered and existing under and by virtue of the laws of the State of California, with its principal office in the City of Hollywood, State of California. The amount in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand Dollars.

4. Prior to May, 1949 plaintiff created, composed and wrote the words and music in a musical composition entitled "SLEEPY TIME FOR DOLLY".

5. Said musical composition in both its words and music was new and wholly original, has not been published in the United States or elsewhere and is copyrightable subject matter under the laws of the United States as an unpublished musical composition.

6. On May 13, 1949 LINCOLN RECORDS, INC. complied in all respects with Title 17, United States Code, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said musical composition, receiving from the Register of Copyrights a certificate of registration, dated and identified as follows: "May 13, 1949, Class E, No. Eu 167323."

7. In or about October, 1951 said Lincoln Records, Inc., a corporation chartered and existing under and by virtue of the laws of the State of New York, sold, transferred and assigned to the plaintiff any and all rights and copyrights held by it in the musical composition "SLEEPY TIME FOR DOLLY" and in every part thereof, and all claims and causes of action for the use, licensing or infringement thereof.

8. By reason of the foregoing assignment plaintiff, the original creator of the composition, became and now is the sole and exclusive proprietor of the said musical composition and of all rights, title and interest in and to

complied in all respects with Title 17, United States Code,

the copyright therein and of all claims and causes of action for the use, licensing or infringement thereof.

9. After about May, 1949, defendant infringed said copyright by utilizing, assigning or licensing without permission the mechanical reproduction rights, and by mechanically reproducing, manufacturing, distributing and selling mechanical reproductions of the aforementioned musical composition in the City of New York and elsewhere throughout the United States.

10. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A SECOND CLAIM

11. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 1, 2 and 3 as if fully set forth herein.

12. Prior to May, 1949 plaintiff created, composed and wrote the words and music in a musical composition entitled "NIGHT SONG FOR LITTLE ONE".

13. Said musical composition in both its words and music was new and wholly original, has not been published in the United States or elsewhere, and is copyrightable subject matter under the laws of the United States as an unpublished musical composition.

that it was infringing plaintiff's aforesaid rights in said

14. On May 13, 1949, LINCOLN RECORDS, INC. complied in all respects with Title 17, United States Code, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said musical composition, receiving from the Register of Copyrights a certificate of registration dated and identified as follows: "May 13, 1949, Class E, No. Eu 167327."

15. In or about October, 1951 said LINCOLN RECORDS, INC., a corporation chartered and existing under and by virtue of the laws of the State of New York, sold, transferred and assigned to the plaintiff any and all rights and copyrights held by it in the musical composition "NIGHT SONG FOR LITTLE ONE", and in every part thereof, and all claims and causes of action for the use, licensing or infringement thereof.

16. By reason of the foregoing assignment, plaintiff, the original creator of the composition, became and now is the sole and exclusive proprietor of the said musical composition and of all rights and copyrights therein and all claims and causes of action for the use, licensing or infringement thereof.

17. After about May, 1949, defendant infringed said copyright by utilizing, assigning or licensing without permission the mechanical reproduction rights, and by mechanically reproducing, manufacturing, distributing and selling mechanical reproductions of the aforementioned musical composition.

18. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A THIRD CLAIM

19. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 1, 2 and 3 as if fully set forth herein.

20. Prior to January, 1951 plaintiff created, composed and wrote the words and music in a musical composition entitled "COWBOY'S OLD HORSE".

21. Said musical composition in both its words and music was new and wholly original, has not been published in the United States or elsewhere, and is copyrightable subject matter under the laws of the United States as an unpublished musical composition.

22. On January 31, 1951, Lincoln Records, Inc. complied in all respects with Title 17, United States Code, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said musical composition, receiving from the Register of Copyrights a certificate of registration dated and identified as follows: "January 31, 1951, Class E, No. Eu 227890."

23. In or about October, 1951 said Lincoln Records, Inc., a corporation chartered and existing under

and by virtue of the laws of the State of New York, sold, transferred and assigned to the plaintiff any and all rights and copyrights held by it in the musical composition "COWBOY'S OLD HORSE", and in every part thereof, and all claims and causes of action for the use, licensing or infringement thereof.

24. By reason of the foregoing assignment, plaintiff, the original creator of the composition, became and now is the sole and exclusive proprietor of the said musical composition and of all rights and copyrights therein and all claims and causes of action for the use, licensing or infringement thereof.

25. After about January, 1951 defendant infringed said copyright by utilizing, assigning or licensing without permission the mechanical reproduction rights, and by mechanically reproducing, manufacturing, distributing and selling mechanical reproductions of the aforementioned musical composition.

26. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A FOURTH CLAIM

27. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 1, 2 and 3 as if fully set forth herein.

28. Prior to January, 1951 plaintiff created, composed and wrote the words and music in a musical composition entitled "WYNKEN BLYNKEN AND NOD".

29. Said musical composition in both its words and music was new and wholly original, has not been published in the United States or elsewhere, and is copyrightable subject matter under the laws of the United States as an unpublished musical composition.

30. On January 31, 1951, Lincoln Records, Inc. complied in all respects with Title 17, U. S. Code, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said musical composition, receiving from the Register of Copyrights a certificate of registration dated and identified as follows: "January 31, 1951, Class E, No. Eu 227879."

31. In or about October, 1951 said Lincoln Records, Inc., a corporation chartered and existing under and by virtue of the laws of the State of New York, sold, transferred and assigned to the plaintiff any and all rights and copyrights held by it in the musical composition "WYNKEN BLYNKEN AND NOD", and in every part thereof, and all other claims and causes of action for the use, licensing or infringement thereof.

32. By reason of the foregoing assignment, plaintiff, the original creator of the composition, became and now is the sole and exclusive proprietor of the said musical composition and of all rights and copyrights therein and all claims and causes of action for the use, licensing or infringement thereof.

33. After about January, 1951, defendant infringed said copyright by utilizing, assigning or licensing without permission the mechanical reproduction rights, and by mechanically reproducing, manufacturing, distributing and selling mechanical reproductions of the aforementioned musical composition.

34. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A FIFTH CLAIM

35. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 1, 2 and 3 as if fully set forth herein.

36. Prior to May, 1949 plaintiff created, composed and wrote the words and music in a musical composition entitled "OLD MOTHER HUBBARD".

37. Said musical composition in both its words and music was new and wholly original, has not been published in the United States or elsewhere, and is copyrightable subject matter under the laws of the United States as an unpublished musical composition.

38. On May 13, 1949 Lincoln Records, Inc. complied in all respects with Title 17, U. S. Code, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said musical

composition, receiving from the Register of Copyrights a certificate of registration dated and identified as follows: "May 13, 1949, Class E, No. Eu 167325."

39. In or about October, 1951 said Lincoln Records, Inc., a corporation chartered and existing under and by virtue of the laws of the State of New York, sold, transferred and assigned to the plaintiff any and all rights and copyrights held by it in the musical composition "OLD MOTHER HUBBARD", and in every part thereof, and all claims and causes of action for the use, licensing or infringement thereof.

40. By reason of the foregoing assignment, plaintiff, the original creator of the composition, became and now is the sole and exclusive proprietor of the said musical composition and of all rights and copyrights therein and all claims and causes of action for the use, licensing or infringement thereof.

41. After about May, 1949, defendant infringed said copyright by utilizing, assigning or licensing without permission the mechanical reproduction rights, and by mechanically reproducing, manufacturing, distributing and selling mechanical reproductions of the aforementioned musical composition.

42. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A SIXTH CLAIM

43. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 1, 2 and 3 as if fully set forth herein.

44. Prior to May, 1949 plaintiff created, composed and wrote the words and music in a musical composition entitled "THE MONKEY WHO WANTED TO FLY".

45. Said musical composition in both its words and music was new and wholly original, has not been published in the United States or elsewhere, and is copyrightable subject matter under the laws of the United States as an unpublished musical composition.

46. On May 13, 1949, Lincoln Records, Inc. complied in all respects with Title 17, United States Code, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said musical composition, receiving from the Register of Copyrights a certificate of registration dated and identified as follows: "May 13, 1949, Class E, No. Eu 167317."

47. In or about October, 1951 said Lincoln Records, Inc., a corporation chartered and existing under and by virtue of the laws of the State of New York, sold, transferred and assigned to the plaintiff any and all rights and copyrights held by it in the musical composition "THE MONKEY WHO WANTED TO FLY".

48. By reason of the foregoing assignment, plaintiff, the original creator of the composition, became

and now is the sole and exclusive proprietor of the said musical composition and of all rights and copyrights therein and all claims and causes of action for the use, licensing or infringement thereof.

49. After about May, 1949, defendant infringed said copyright by utilizing, assigning or licensing without permission the mechanical reproduction rights, and by mechanically reproducing, manufacturing, distributing and selling mechanical reproductions of the aforementioned musical composition.

50. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A SEVENTH CLAIM

51. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 1, 2 and 3 as if fully set forth herein.

52. Prior to January, 1951 plaintiff created, composed and wrote the words and music in a musical composition entitled "SANTA CLAUS IS FLYING THROUGH THE SKY".

53. Said musical composition in both its words and music was new and wholly original, has not been published in the United States or elsewhere, and is copyrightable subject matter under the laws of the United States as an unpublished musical composition.

54. On January 31, 1951, Lincoln Records, Inc. complied in all respects with Title 17, U. S. Code, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said musical composition, receiving from the Register of Copyrights a certificate of registration dated and identified as follows: "January 31, 1951, Class E, No. Eu 227885."

55. In or about October, 1951 said Lincoln Records, Inc., a corporation chartered and existing under and by virtue of the laws of the State of New York, sold, transferred and assigned to the plaintiff any and all rights and copyrights held by it in the musical composition "SANTA CLAUS IS FLYING THROUGH THE SKY", and in every part thereof, and all claims and causes of action for the use, licensing or infringement thereof.

56. By reason of the foregoing assignment, plaintiff, the original creator of the composition, became and now is the sole and exclusive proprietor of the said musical composition and of all rights and copyrights therein and all claims and causes of action for the use, licensing or infringement thereof.

57. After about January, 1951 defendant infringed said copyright by utilizing, assigning or licensing without permission the mechanical reproduction rights, and by mechanically reproducing, manufacturing, distributing and selling mechanical reproductions of the aforementioned musical composition.

58. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR AN EIGHTH CLAIM

59 Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 1, 2 and 3 as if fully set forth herein.

60. Prior to May, 1949 plaintiff created, composed and wrote the words and music in a musical composition entitled "HOBBLEDY HORSE".

61. Said musical composition in both its words and music was new and wholly original, has not been published in the United States or elsewhere, and is copyrightable subject matter under the laws of the United States as an unpublished musical composition.

62. On May 13, 1949, Lincoln Records, Inc. complied in all respects with Title 17, United States Code, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said musical composition, receiving from the Register of Copyrights a certificate of registration dated and identified as follows: "May 13, 1949, Class E, No. Eu 167314."

63. In or about October, 1951 said Lincoln Records, Inc., a corporation chartered and existing under

133. Said musical composition in both its words

and by virtue of the laws of the State of New York, sold, transferred and assigned to the plaintiff any and all rights and copyrights held by it in the musical composition "HOBBLEDY HORSE", and in every part thereof, and all claims and causes of action for the use, licensing or infringement thereof.

64. By reason of the foregoing assignment, plaintiff, the original creator of the composition, became and now is the sole and exclusive proprietor of the said musical composition and of all rights and copyrights therein and all claims and causes of action for the use, licensing or infringement thereof.

65. After about May, 1949, defendant infringed said copyright by utilizing, assigning or licensing without permission the mechanical reproduction rights, and by mechanically reproducing, manufacturing, distributing and selling mechanical reproductions of the aforementioned musical composition.

66. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A NINTH CLAIM

67. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 1, 2 and 3 as if fully set forth herein.

68. Prior to May, 1949 plaintiff created, composed and wrote the words and music in a musical composition entitled "CHARLIE HAD A CHOO-CHOO" (also entitled "RUNAWAY CHOO-CHOO TRAIN").

69. Said musical composition in both its words and music was new and wholly original, has not been published in the United States or elsewhere, and is copyrightable subject matter under the laws of the United States as an unpublished musical composition.

70. On May 13, 1949, Lincoln Records, Inc. complied in all respects with Title 17, United States Code, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said musical composition, receiving from the Register of Copyrights a certificate of registration dated and identified as follows: "May 13, 1949, Class E, No. Eu 167318."

71. In or about October, 1951 said Lincoln Records, Inc., a corporation chartered and existing under and by virtue of the laws of the State of New York, sold, transferred and assigned to the plaintiff any and all rights and copyrights held by it in the musical composition "CHARLIE HAD A CHOO-CHOO", and in every part thereof, and all claims and causes of action for the use, licensing or infringement thereof.

72. By reason of the foregoing assignment, plaintiff, the original creator of the composition, became and now is the sole and exclusive proprietor of the said

musical composition and of all rights and copyrights therein and all claims and causes of action for the use, licensing or infringement thereof.

73. After about May, 1949, defendant infringed said copyright by utilizing, assigning or licensing without permission the mechanical reproduction rights, and by mechanically reproducing, manufacturing, distributing and selling mechanical reproductions of the aforementioned musical composition.

74. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A TENTH CLAIM

75. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 1, 2 and 3 as if fully set forth herein.

76. Prior to January, 1951 plaintiff created, composed and wrote the words and music in a musical composition entitled "RAPUNZEL".

77. Said musical composition in both its words and music was new and wholly original, has not been published in the United States or elsewhere, and is copyrightable subject matter under the laws of the United States as an unpublished musical composition.

has been and still is the sole proprietor of all rights,

78. On January 31, 1951 Lincoln Records, Inc. complied in all respects with Title 17, United States Code, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said musical composition, receiving from the Register of Copyrights a certificate of registration dated and identified as follows: "January 31, 1951, Class E, No. Eu 227886."

79. In or about October, 1951, said Lincoln Records, Inc., a corporation chartered and existing under and by virtue of the laws of the State of New York, sold, transferred and assigned to the plaintiff any and all rights and copyrights held by it in the musical composition, "RAPUNZEL", and in every part thereof, and all claims and causes of action for the use, licensing or infringement thereof.

80. By reason of the foregoing assignment, plaintiff, the original creator of the composition, became and now is the sole and exclusive proprietor of the said musical composition and of all rights and copyrights therein and all claims and causes of action for the use, licensing or infringement thereof.

81. After about January, 1951 defendant infringed said copyright by utilizing, assigning or licensing without permission the mechanical reproduction rights, and by mechanically reproducing, manufacturing, distributing and selling mechanical reproductions of the aforementioned musical composition.

82. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR AN ELEVENTH CLAIM

83. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 1, 2 and 3 as if fully set forth herein.

84. Prior to May, 1949 plaintiff created, composed and wrote the words and music in a musical composition entitled "THE FROG AND THE OX".

85. Said musical composition in both its words and music was new and wholly original, has not been published in the United States or elsewhere, and is copyrightable subject matter under the laws of the United States as an unpublished musical composition.

86. On May 13, 1949 Lincoln Records, Inc. complied in all respects with Title 17, United States Code, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said musical composition, receiving from the Register of Copyrights a certificate of registration dated and identified as follows: "May 13, 1949, Class E, No. Eu 167315."

87. In or about October, 1951, said Lincoln Records, Inc., a corporation chartered and existing under and by virtue of the laws of the State of New York, sold,

transferred and assigned to the plaintiff any and all rights and copyrights held by it in the musical composition "THE FROG AND THE OX", and in every part thereof, and all claims and causes of action for the use, licensing or infringement thereof.

88. By reason of the foregoing assignment, plaintiff, the original creator of the composition, became and now is the sole and exclusive proprietor of the said musical composition and of all rights and copyrights therein and all claims and causes of action for the use, licensing or infringement thereof.

89. After about May, 1949, defendant infringed said copyright by utilizing, assigning or licensing without permission the mechanical reproduction rights, and by mechanically reproducing, manufacturing, distributing and selling mechanical reproductions of the aforementioned musical composition.

90. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A TWELFTH CLAIM

91. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 1, 2 and 3 as if fully set forth herein.

all claims and causes of action for the use, licensing or

92. Prior to May, 1949 plaintiff created, composed and wrote the words and music in a musical composition entitled "THE LION AND THE MOUSE".

93. Said musical composition in both its words and music was new and wholly original, has not been published in the United States or elsewhere, and is copyrightable subject matter under the laws of the United States as an unpublished musical composition.

94. On May 13, 1949 Lincoln Records, Inc. complied in all respects with Title 17, United States Code, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said musical composition, receiving from the Register of Copyrights a certificate of registration dated and identified as follows: "May 13, 1949, Class E, No. Eu 167313."

95. In or about October, 1951 said Lincoln Records, Inc., a corporation chartered and existing under and by virtue of the laws of the State of New York, sold, transferred and assigned to the plaintiff any and all rights and copyrights held by it in the musical composition "THE LION AND THE MOUSE", and in every part thereof, and all claims and causes of action for the use, licensing or infringement thereof.

96. By reason of the foregoing assignment, plaintiff, the original creator of the composition, became and now is the sole and exclusive proprietor of the said musical composition and of all rights and copyrights therein and all claims and causes of action for the use, licensing

or infringement thereof.

97. After about May, 1949, defendant infringed said copyright by utilizing, assigning or licensing without permission the mechanical reproduction rights, and by mechanically reproducing, manufacturing, distributing and selling mechanical reproductions of the aforementioned musical composition.

98. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A THIRTEENTH CLAIM

99. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 1, 2 and 3 as if fully set forth herein.

100. Prior to January, 1951 plaintiff created, composed and wrote the words and music in a musical composition entitled "CHICKEN LICKEN".

101. Said musical composition in both its words and music was new and wholly original, has not been published in the United States or elsewhere, and is copyrightable subject matter under the laws of the United States as an unpublished musical composition.

102. On January 31, 1951 Lincoln Records, Inc. complied in all respects with Title 17, U. S. Code, and all other laws governing copyright, and secured the exclusive

rights and privileges in and to the copyright of said musical composition, receiving from the Register of Copyrights a certificate of registration dated and identified as follows: "January 31, 1951, Class E, No. Eu 227897."

103. In or about October, 1951 said Lincoln Records, Inc., a corporation chartered and existing under and by virtue of the laws of the State of New York, sold, transferred and assigned to the plaintiff any and all rights and copyrights held by it in the musical composition "CHICKEN LICKEN", and in every part thereof, and all claims and causes of action for the use, licensing or infringement thereof.

104. By reason of the foregoing assignment, plaintiff, the original creator of the composition, became and now is the sole and exclusive proprietor of the said musical composition and of all rights and copyrights therein and all claims and causes of action for the use, licensing or infringement thereof.

105. After about January, 1951, defendant infringed said copyright by utilizing, assigning or licensing without permission the mechanical reproduction rights, and by mechanically reproducing, manufacturing, distributing and selling mechanical reproductions of the aforementioned musical composition.

106. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless

continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A FOURTEENTH CLAIM

107. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 1, 2 and 3 as if fully set forth herein.

108. Prior to May, 1949 plaintiff created, composed and wrote the words and music in a musical composition entitled "THE WEEZ WUMP".

109. Said musical composition in both its words and music was new and wholly original, has not been published in the United States or elsewhere, and is copyrightable subject matter under the laws of the United States as an unpublished musical composition.

110. On May 13, 1949, Lincoln Records, Inc. complied in all respects with Title 17, U. S. Code, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said musical composition, receiving from the Register of Copyrights a certificate of registration dated and identified as follows: "May 13, 1949, Class E, No. Eu 167326."

111. In or about October, 1951 said Lincoln Records, Inc., a corporation chartered and existing under and by virtue of the laws of the State of New York, sold, transferred and assigned to the plaintiff any and all rights and copyrights held by it in the musical composition "THE WEEZ WUMP", and in every part thereof, and all claims and causes of action for the use, licensing or infringement thereof.

112. By reason of the foregoing assignment, plaintiff, the original creator of the composition, became and now is the sole and exclusive proprietor of the said musical composition and of all rights and copyrights therein and all claims and causes of action for the use, licensing or infringement thereof.

113. After about May, 1949, defendant infringed said copyright by utilizing, assigning or licensing without permission the mechanical reproduction rights, and by mechanically reproducing, manufacturing, distributing and selling mechanical reproductions of the aforementioned musical composition.

114. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A FIFTEENTH CLAIM

115. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 1, 2 and 3 as if fully set forth herein.

116. Prior to May, 1949, plaintiff created, composed and wrote the words and music in a musical composition entitled "THE PIED PIPER".

117. Said musical composition in both its words and music was new and wholly original, has not been published in the United States or elsewhere, and is copyrightable

or infringement thereof.

subject matter under the laws of the United States as an unpublished musical composition.

118. On May 23, 1949, Lincoln Records, Inc. complied in all respects with Title 17, United States Code, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said musical composition, receiving from the Register of Copyrights a certificate of registration dated and identified as follows: "May 23, 1949, Class E, No. Eu 168860."

119. In or about October, 1951 said Lincoln Records, Inc., a corporation chartered and existing under and by virtue of the laws of the State of New York, sold, transferred and assigned to the plaintiff any and all rights and copyrights held by it in the musical composition "THE PIED PIPER", and in every part thereof, and all claims and causes of action for the use, licensing or infringement thereof.

120. By reason of the foregoing assignment, plaintiff, the original creator of the composition, became and now is the sole and exclusive proprietor of the said musical composition and of all rights and copyrights therein and all claims and causes of action for the use, licensing or infringement thereof.

121. After about May, 1949, defendant infringed said copyright by utilizing, assigning or licensing without permission the mechanical reproduction rights, and by mechanically reproducing, manufacturing, distributing and selling mechanical reproductions of the aforementioned musical composition.

122. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A SIXTEENTH CLAIM

123. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 1, 2 and 3 as if fully set forth herein.

124. Prior to May 13, 1949, plaintiff created, composed and wrote the words and music in a musical composition entitled "FUNNY BUNNY".

125. Said musical composition in both its words and music was new and wholly original, has not been published in the United States or elsewhere, and is copyrightable subject matter under the laws of the United States an an unpublished musical composition.

126. On May 13, 1949, Lincoln Records, Inc. complied in all respects with Title 17, United States Code, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said musical composition, receiving from the Register of Copyrights a certificate of registration dated and identified as follows: "May 13, 1949, Class E, No. Eu 167321."

127. In or about October, 1951 said Lincoln Records, Inc., a corporation chartered and existing under and by virtue of the laws of the State of New York, sold,

transferred and assigned to the plaintiff any and all rights and copyrights held by it in the musical composition "FUNNY BUNNY", and in every part thereof, and all claims and causes of action for the use, licensing or infringement thereof.

128. By reason of the foregoing assignment, plaintiff, the original creator of the composition, became and now is the sole and exclusive proprietor of the said musical composition and of all rights and copyrights therein and all claims and causes of action for the use, licensing or infringement thereof.

129. After about May, 1949, defendant infringed said copyright by utilizing, assigning or licensing without permission the mechanical reproduction rights, and by mechanically reproducing, manufacturing, distributing and selling mechanical reproductions of the aforementioned musical composition.

130. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A SEVENTEENTH CLAIM

131. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 1, 2 and 3 as if fully set forth herein.

132. Prior to May, 1949, plaintiff created, composed and wrote the words and music in the musical

composition entitled "SHOEMAKER AND THE ELVES".

133. Said musical composition in both its words and music was new and wholly original, has not been published in the United States or elsewhere, and is copyrightable subject matter under the laws of the United States as an unpublished musical composition.

134. On May 13, 1949, Lincoln Records, Inc. complied in all respects with Title 17, United States Code, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said musical composition, receiving from the Register of Copyrights a certificate of registration dated and identified as follows: "May 13, 1949, Class E, No. Eu 167324."

135. In or about October, 1951 said Lincoln Records, Inc., a corporation chartered and existing under and by virtue of the laws of the State of New York, sold, transferred and assigned to the plaintiff any and all rights and copyrights held by it in the musical composition "THE SHOEMAKER AND THE ELVES", and in every part thereof, and all claims and causes of action for the use, licensing or infringement thereof.

136. By reason of the foregoing assignment, plaintiff, the original creator of the composition, became and now is the sole and exclusive proprietor of the said musical composition and of all rights and copyrights therein and all claims and causes of action for the use, licensing or infringement thereof.

137. After about May, 1949, defendant infringed said copyright by utilizing, assigning or licensing without permission the mechanical reproduction rights, and by mechanically reproducing, manufacturing, distributing and selling mechanical reproductions of the aforementioned musical composition.

138. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR AN EIGHTEENTH CLAIM

139. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 1, 2 and 3 as if fully set forth herein.

140. Prior to December, 1964, plaintiff, Marion Rosette, created, composed and wrote a musical composition entitled "PUSSY CAT, PUSSY CAT" (also known as "PUSSY CAT'S JOURNEY"), an adaptation and arrangement with original lyrics.

141. The said adaptation, arrangement and additional lyrics were new and wholly original, have not been published in the United States or elsewhere, and are copyrightable subject matter under the laws of the United States as an unpublished musical composition.

142. On December 23, 1964, Marion Rosette complied in all respects with Title 17, U. S. Code, and

all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said musical composition, receiving from the Register of Copyrights a certificate of registration dated and identified as follows: "December 23, 1964, Class E, No. Eu 861274."

143. Since December 23, 1964, plaintiff has been and still is the sole proprietor of all right, title and interest in and to the copyright of said musical composition.

144. After December 23, 1964, defendant infringed said copyright by utilizing, assigning or licensing without permission the mechanical reproduction rights, and by mechanically reproducing, manufacturing, distributing and selling mechanical reproductions of the aforementioned musical composition.

145. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A NINETEENTH CLAIM

146. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 2 and 3 as if fully set forth herein.

147. The musical composition "PUSSY CAT, PUSSY CAT", an adaptation and arrangement with original lyrics was created, composed and written by plaintiff prior to September, 1960 and was new and wholly original with said plaintiff.

148. Since before September, 1960, plaintiff has been and still is the sole proprietor of all rights, title and interest in said composition.

149. Since prior to December 23, 1964, defendant has been infringing the rights of plaintiff in said musical composition by utilizing, assigning and licensing without permission the mechanical reproduction rights and by mechanically reproducing, manufacturing and selling mechanical reproductions of said musical composition.

150. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A TWENTIETH CLAIM

151. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 1, 2 and 3 as if fully set forth herein.

152. Prior to May 13, 1949 plaintiff created, composed and wrote the words and music in the musical composition entitled "LITTLE RED HEN".

153. Said musical composition in both its words and music was new and wholly original, has not been published in the United States or elsewhere, and is copyrightable subject matter under the laws of the United States as an unpublished musical composition.

154. On May 13, 1949, Lincoln Records, Inc.

complied in all respects with Title 17, United States Code, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said musical composition, receiving from the Register of Copyrights a certificate of registration dated and identified as follows: "May 13, 1949, Class E, No. Eu 167328."

155. In or about October, 1951 said Lincoln Records, Inc., a corporation chartered and existing under and by virtue of the laws of the State of New York, sold, transferred and assigned to the plaintiff any and all rights and copyrights held by it in the musical composition "LITTLE RED HEN", and in every part thereof, and all claims and causes of action for the use, licensing or infringement thereof.

156. By reason of the foregoing assignment, plaintiff, the original creator of the composition, became and now is the sole and exclusive proprietor of the said musical composition and of all rights and copyrights therein and all claims and causes of action for the use, licensing or infringement thereof.

157. After about May, 1949, defendant infringed said copyright by utilizing, assigning or licensing without permission the mechanical reproduction rights, and by mechanically reproducing, manufacturing, distributing and selling mechanical reproductions of the aforementioned musical composition.

158. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said

musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A TWENTY-FIRST CLAIM

159. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 1, 2 and 3 as if fully set forth herein.

160. Prior to May, 1949 plaintiff created, composed and wrote the words and music in a musical composition entitled "THE FISHERMAN AND THE FLOUNDER".

161. Said musical composition in both its words and music was new and wholly original, has not been published in the United States or elsewhere, and is copyrightable subject matter under the laws of the United States as an unpublished musical composition.

162. On May 13, 1949, Lincoln Records, Inc. complied in all respects with Title 17, United States Code, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said musical composition, receiving from the Register of Copyrights a certificate of registration dated and identified as follows: "May 13, 1949, Class E, No. Eu 167316."

163. In or about October, 1951 said Lincoln Records, Inc., a corporation chartered and existing under and by virtue of the laws of the State of New York, sold, transferred and assigned to the plaintiff any and all rights and copyrights held by it in the musical composition "THE

FISHERMAN AND THE FLOUNDER", and in every part thereof, and all claims and causes of action for the use, licensing or infringement thereof.

164. By reason of the foregoing assignment, plaintiff, the original creator of the composition, became and now is the sole and exclusive proprietor of the said musical composition and of all rights and copyrights therein and all claims and causes of action for the use, licensing or infringement thereof.

165. After about May, 1949, defendant infringed said copyright by utilizing, assigning or licensing without permission the mechanical reproduction rights, and by mechanically reproducing, manufacturing, distributing and selling mechanical reproductions of the aforementioned musical composition.

166. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A TWENTY-SECOND CLAIM

167. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 1, 2 and 3 as if fully set forth herein.

168. Prior to May, 1949 plaintiff created, composed and wrote the words and music in a musical composition entitled "PADDY THE BAKERY BOY".

by mechanically reproducing, manufacturing, distributing and

169. Said musical composition in both its words and music was new and wholly original, has not been published in the United States or elsewhere, and is copyrightable subject matter under the laws of the United States as an unpublished musical composition.

170. On May 13, 1949, Lincoln Records, Inc. complied in all respects with Title 17, United States Code, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said musical composition, receiving from the Register of Copyrights a certificate of registration dated and identified as follows: "May 13, 1949, Class E, No. Eu 167322."

171. In or about October, 1951 said Lincoln Records, Inc., a corporation chartered and existing under and by virtue of the laws of the State of New York, sold, transferred and assigned to the plaintiff any and all rights and copyrights held by it in the musical composition "PADDY THE BAKERY BOY", and in every part thereof, and all claims and causes of action for the use, licensing or infringement thereof.

172. By reason of the foregoing assignment, plaintiff, the original creator of the composition, became and now is the sole and exclusive proprietor of the said musical composition and of all rights and copyrights therein and all claims and causes of action for the use, licensing or infringement thereof.

173. After about May, 1949, defendant infringed said copyright by utilizing, assigning or licensing without

that it was infringing plaintiff's aforesaid rights in said

permission the mechanical reproduction rights, and by mechanically reproducing, manufacturing, distributing and selling mechanical reproductions of the aforementioned musical composition. 40a

174. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A TWENTY-THIRD CLAIM

175. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 1, 2 and 3 as if fully set forth herein.

176. Prior to January, 1951 plaintiff created, composed and wrote t' words and music in a musical composition entitled "JACK AND THE BEANSTALK".

177. Said musical composition in both its words and music was new and wholly original, has not been published in the United States or elsewhere, and is copyrightable subject matter under the laws of the United States as an unpublished musical composition.

178. On January 31, 1951, Lincoln Records, Inc. complied in all respects with Title 17, United States Code, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said musical composition, receiving from the Register of Copyrights a certificate of registration dated and identified as follows: "January 31, 1951, Class E, No. Eu 227898.

179. In or about October, 1951 said Lincoln Records, Inc., a corporation chartered and existing under and by virtue of the laws of the State of New York, sold, transferred and assigned to the plaintiff any and all rights and copyrights held by it in the musical composition "JACK AND THE BEANSTALK", and in every part thereof, and all claims and causes of action for the use, licensing or infringement thereof.

180. By reason of the foregoing assignment, plaintiff, the original creator of the composition, became and now is the sole and exclusive proprietor of the said musical composition and of all rights and copyrights therein and all claims and causes of action for the use, licensing or infringement thereof.

181. After about January, 1951, defendant infringed said copyright by utilizing, assigning or licensing without permission the mechanical reproduction rights, and by mechanically reproducing, manufacturing, distributing and selling mechanical reproductions of the aforementioned musical composition.

182. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A TWENTY-FOURTH CLAIM

183. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs

numbered 1, 2 and 3 as if fully set forth herein.

184. Prior to May, 1949 plaintiff created, composed and wrote the words and music in a musical composition entitled "BRAVE LITTLE SAMBO".

185. Said musical composition in both its words and music was new and wholly original, has not been published in the United States or elsewhere, and is copyrightable subject matter under the laws of the United States as an unpublished musical composition.

186. On May 13, 1949, Lincoln Records, Inc. complied in all respects with Title 17, United States Code, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said musical composition, receiving from the Register of Copyrights a certificate of registration dated and identified as follows: "May 13, 1949, Class E, No. Eu 167320."

187. In or about October, 1951 said Lincoln Records, Inc., a corporation chartered and existing under and by virtue of the laws of the State of New York, sold, transferred and assigned to the plaintiff any and all rights and copyrights held by it in the musical composition "BRAVE LITTLE SAMBO", and in every part thereof, and all claims and causes of action for the use, licensing or infringement thereof.

188. By reason of the foregoing assignment, plaintiff, the original creator of the composition, became and now is the sole and exclusive proprietor of the said musical composition and of all rights and copyrights therein

and all claims and causes of action for the use, licensing or infringement thereof.

189. After about May, 1961, defendant infringed said copyright by utilizing, assigning or licensing without permission the mechanical reproduction rights, and by mechanically reproducing, manufacturing, distributing and selling mechanical reproductions of the aforementioned musical composition.

190. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A TWENTY-FIFTH CLAIM

191. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 1, 2 and 3 as if fully set forth herein.

192. Prior to December, 1963, plaintiff, Marion Rosette, created, composed and wrote the words and music in a musical composition entitled "PINOCCHIO".

193. Said musical composition in both its words and music was new and wholly original, has not been published in the United States or elsewhere, and is copyrightable subject matter under the laws of the United States as an unpublished musical composition.

194. On December 31, 1963, Marion Rosette complied in all respects with Title 17, United States Code,

and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said musical composition, receiving from the Register of Copyrights a certificate of registration dated and identified as follows: "December 31, 1963, Class E, No. Eu 806581."

195. Since December 31, 1963, plaintiff has been and still is the sole proprietor of all right, title and interest in and to the copyright of said musical composition.

196. After December 31, 1963, defendant infringed said copyright by utilizing, assigning or licensing without permission the mechanical reproduction rights, and by mechanically reproducing, manufacturing, distributing and selling mechanical reproductions of the aforementioned musical composition.

197. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A TWENTY-SIXTH CLAIM

198. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 2 and 3 as if fully set forth herein.

199. The musical composition "PINOCCHIO" was created, composed and written by plaintiff prior to September, 1960 and was new and wholly original with said plaintiff.

March 2, 1964, Class E, No. Eu 813624."

200. Since before September, 1960, plaintiff has been and still is the sole proprietor of all rights, title and interest in said composition.

201. Since prior to December 31, 1963, defendant has been infringing the rights of plaintiff in said musical composition by utilizing, assigning and licensing without permission the mechanical reproduction rights and by mechanically reproducing, manufacturing and selling mechanical reproductions of said musical composition.

202. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A TWENTY-SEVENTH CLAIM

203. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 1, 2 and 3 as if fully set forth herein.

204. Prior to September, 1963 plaintiff, Marion Rosette, created, composed and wrote a musical composition entitled "MARY HAD A LITTLE LAMB", an adaptation and arrangement with additional original lyrics and dialogue.

205. The said adaptation, arrangement, and additional lyrics and dialogue were new and wholly original, had not been published in the United States or elsewhere, and are copyrightable subject matter under the laws of the United States as an unpublished musical composition.

206. On September 13, 1963, Marion Rosette complied in all respects with Title 17, U. S. Code, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said musical composition, receiving from the Register of Copyrights a certificate of registration dated and identified as follows: "September 12, 1963, Class E, No. E 789352."

207. Since September 12, 1963, plaintiff has been and still is the sole proprietor of all right, title and interest in and to the copyright of said musical composition.

208. After September 12, 1963, defendant infringed said copyright by utilizing, assigning or licensing without permission the mechanical reproduction rights, and by mechanically reproducing, manufacturing, distributing and selling mechanical reproductions of the aforementioned musical composition.

209. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A TWENTY-EIGHTH CLAIM

210. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 2 and 3 as if fully set forth herein.

211. The musical composition "MARY HAD A LITTLE LAMB", an adaptation and arrangement with original lyrics and dialogue, was created, composed and written by plaintiff prior to September, 1960 and was new and wholly original with said plaintiff.

212. Since before September, 1960, plaintiff has been and still is the sole proprietor of all rights, title and interest in said composition.

213. Since prior to September 12, 1963, defendant has been infringing the rights of plaintiff in said musical composition by utilizing, assigning and licensing without permission the mechanical reproduction rights and by mechanically reproducing, manufacturing and selling mechanical reproductions of said musical composition.

214. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A TWENTY-NINTH CLAIM

215. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 1, 2 and 3 as if fully set forth herein.

216. Prior to September, 1962 plaintiff, Marion Rosette, created, composed and wrote the musical composition entitled "DING DONG BELL" (also known as "PUSSY IN THE WELL"), an adaptation of a poem with additional lyrics and original music.

217. Said adaptation with additional lyrics and original music was new and wholly original, has not been published in the United States or elsewhere, and is copyrightable subject matter under the laws of the United States as an unpublished musical composition.

218. On September 4, 1962, Marion Rosette complied in all respects with Title 17, U. S. Code, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said musical composition, receiving from the Register of Copyrights a certificate of registration dated and identified as follows: "September 4, 1962, Class E, No. Eu 734929."

219. Since September 4, 1962, plaintiff has been and still is the sole proprietor of all right, title and interest in and to the copyright of said musical composition.

220. After September 4, 1962, defendant infringed said copyright by utilizing, assigning or licensing without permission the mechanical reproduction rights, and by mechanically reproducing, manufacturing, distributing and selling mechanical reproductions of the aforementioned musical composition.

221. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A THIRTIETH CLAIM

222. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 2 and 3 as if fully set forth herein.

223. The musical composition "DING DONG BELL", an adaptation with original lyrics and additional music, was created, composed and written by plaintiff prior to September, 1960 and was new and wholly original with said plaintiff.

224. Since before September, 1960, plaintiff has been and still is the sole proprietor of all right, title and interest in said composition.

225. Since prior to September 4, 1962, defendant has been infringing the rights of plaintiff in said musical composition by utilizing, assigning and licensing without permission the mechanical reproduction rights and by mechanically reproducing, manufacturing and selling mechanical reproductions of said musical composition.

226. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A THIRTY-FIRST CLAIM

227. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 1, 2 and 3 as if fully set forth herein.

228. Prior to December, 1964 plaintiff, Marion Rosette, created, composed and wrote the musical composition entitled "FIDDLE-DE-DEE" (also known as "THE FLY AND THE BUMBLEBEE"), an adaptation and arrangement with original lyrics.

229. The said adaptation, arrangement and additional lyrics were new and wholly original, have not been published in the United States or elsewhere, and are copyrightable subject matter under the laws of the United States as an unpublished musical composition.

230. On December 23, 1964, Marion Rosette complied in all respects with Title 17, U. S. Code, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said musical composition, receiving from the Register of Copyrights a certificate of registration dated and identified as follows: "December 23, 1964, Class E, No. Eu 860839."

231. Since December 23, 1964, plaintiff has been and still is the sole proprietor of all right, title and interest in and to the copyright of said musical composition.

232. After December 23, 1964, defendant infringed said copyright by utilizing, assigning or licensing without permission the mechanical reproduction rights, and by mechanically reproducing, manufacturing, distributing and selling mechanical reproductions of the aforementioned musical composition.

233. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A THIRTY-SECOND CLAIM

234. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 2 and 3 as if fully set forth herein.

235. The musical composition "FIDDLE-DE-DEE", an adaptation and arrangement with original lyrics was created, composed and written by plaintiff prior to September, 1960 and was new and wholly original with said plaintiff.

236. Since before September, 1960, plaintiff has been and still is the sole proprietor of all right, title and interest in said composition.

237. Since prior to December 23, 1964, defendant has been infringing the rights of plaintiff in said musical composition by utilizing, assigning and licensing without permission the mechanical reproduction rights and by mechanically reproducing, manufacturing and selling mechanical reproductions of said musical composition.

238. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A THIRTY-THIRD CLAIM

239. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 1, 2 and 3 as if fully set forth herein.

240. Prior to September, 1963 plaintiff, Marion Rosette, created, composed and wrote a musical composition entitled "GOOSEY GOOSEY GANDER" (also known as "SILLY GOOSEY GANDER"), an adaptation and arrangement with original lyrics and dialogue.

241. The said adaptation and arrangement and additional lyrics and dialogue were new and wholly original, have not been published in the United States or elsewhere, and are copyrightable subject matter under the laws of the United States as an unpublished musical composition.

242. On September 12, 1963, Marion Rosette complied in all respects with Title 17, U. S. Code, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said musical composition, receiving from the Register of Copyrights a certificate of registration dated and identified as follows: "September 12, 1963, Class E, No. Eu 789350."

243. Since September 12, 1963, plaintiff has been and still is the sole proprietor of all right, title and interest in and to the copyright of said musical composition.

244. After September 12, 1963, defendant infringed said copyright by utilizing, assigning or licensing

without permission the mechanical reproduction rights, and by mechanically reproducing, manufacturing, distributing and selling mechanical reproductions of the aforementioned musical composition.

245. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A THIRTY-FOURTH CLAIM

246. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 2 and 3 as if fully set forth herein.

247. The musical composition "GOOSEY GOOSEY GANDER", an adaptation and arrangement with original lyrics and dialogue, was created, composed and written by plaintiff prior to September, 1960 and was new and wholly original with said plaintiff.

248. Since before September, 1960, plaintiff has been and still is the sole proprietor of all right, title and interest in said composition.

249. Since prior to September 12, 1963, defendant has been infringing the rights of plaintiff in said musical composition by utilizing, assigning and licensing without permission the mechanical reproduction rights and by mechanically reproducing, manufacturing and selling mechanical reproductions of said musical composition.

250. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A THIRTY-FIFTH CLAIM

251. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 1, 2 and 3 as if fully set forth herein.

252. Prior to September, 1962 plaintiff, Marion Rosette, created, composed and wrote a musical composition entitled "WHERE HAS MY LITTLE DOG GONE", an adaptation and arrangement with new lyrics and dialogue.

253. The said adaptation, arrangement and new lyrics and dialogue were new and wholly original, have not been published in the United States or elsewhere and are copyrightable subject matter under the laws of the United States as an unpublished musical composition.

254. On September 4, 1962, Marion Rosette complied in all respects with Title 17, U. S. Code, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said musical composition, receiving from the Register of Copyrights a certificate of registration dated and identified as follows: "September 4, 1962, Class E, No. Eu 734928."

255. Since September 4, 1962 plaintiff has been and still is the sole proprietor of all right, title

and interest in and to the copyright of said musical composition.

256. After September 4, 1962, defendant infringed said copyright by utilizing, assigning or licensing without permission the mechanical reproduction rights, and by mechanically reproducing, manufacturing, distributing and selling mechanical reproductions of the aforementioned musical composition.

257. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A THIRTY-SIXTH CLAIM

258. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 2 and 3 as if fully set forth herein.

259. The musical composition "WHERE HAS MY LITTLE DOG GONE", an adaptation and arrangement with new lyrics and dialogue, was created, composed and written by plaintiff prior to September, 1960 and was new and wholly original with said plaintiff.

260. Since before September, 1960, plaintiff has been and still is the sole proprietor of all rights, title and interest in said composition.

261. Since prior to September 4, 1962, defendant has been infringing the rights of plaintiff in said

musical composition by utilizing, assigning and licensing without permission the mechanical reproduction rights and by mechanically reproducing, manufacturing and selling mechanical reproductions of said musical composition.

262. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A THIRTY-SEVENTH CLAIM

263. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 1, 2 and 3 as if fully set forth herein.

264. Prior to March, 1964, plaintiff created, composed and wrote the words and music in a musical composition entitled "ALICE IN WONDERLAND".

265. Said musical composition in both its words and music was new and wholly original, has not been published in the United States or elsewhere, and is copyrightable subject matter under the laws of the United States as an unpublished musical composition.

266. On March 2, 1964, Marion Rosette complied in all respects with Title 17, U. S. Code, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said musical composition, receiving from the Register of Copyrights a certificate of registration dated and identified as follows: "March 2, 1964, Class E, No. Eu 813620."

267. Since March 2, 1964, plaintiff has been and still is the sole proprietor of all right, title and interest in and to the copyright of said musical composition.

268. After March 2, 1964, defendant infringed said copyright by utilizing, assigning or licensing without permission the mechanical reproduction rights, and by mechanically reproducing, manufacturing, distributing and selling mechanical reproductions of the aforementioned musical composition.

269. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A THIRTY-EIGHTH CLAIM

270. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 2 and 3 as if fully set forth herein.

271. The musical composition "ALICE IN WONDERLAND" was created, composed and written by plaintiff prior to September, 1960 and was new and wholly original with said plaintiff.

272. Since before September, 1960, plaintiff has been and still is the sole proprietor of all rights, title and interest in said composition.

273. Since prior to March 2, 1964, defendant has been infringing the rights of plaintiff in said musical

composition by utilizing, assigning and licensing without permission the mechanical reproduction rights and by mechanically reproducing, manufacturing and selling mechanical reproductions of said musical composition.

274. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A THIRTY-NINTH CLAIM

275. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 1, 2 and 3 as if fully set forth herein.

276. Prior to March, 1964 plaintiff, Marion Rosette, created, composed and wrote the musical composition entitled "OLD KING COLE", an adaptation and arrangement of a traditional composition.

277. The said adaptation and arrangement were new and wholly original, have not been published in the United States or elsewhere and are copyrightable subject matter under the laws of the United States as an unpublished musical composition.

278. On March 2, 1964, Marion Rosette complied in all respects with Title 17, U. S. Code, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said musical composition, receiving from the Register of Copyrights a

certificate of registration dated and identified as follows: "March 2, 1964, Class E, No. Eu 813624."

279. Since March 2, 1964, plaintiff has been and still is the sole proprietor of all right, title and interest in and to the copyright of said musical composition.

280. After March 2, 1964, defendant infringed said copyright by utilizing, assigning or licensing without permission the mechanical reproduction rights, and by mechanically reproducing, manufacturing, distributing and selling mechanical reproductions of the aforementioned musical composition.

281. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A FORTIETH CLAIM

282. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 2 and 3 as if fully set forth herein.

283. The musical composition "OLD KING COLE", an adaptation and arrangement was created, composed and written by plaintiff prior to September, 1960, and was new and wholly original with said plaintiff.

284. Since before September, 1960, plaintiff has been and still is the sole proprietor of all rights, title and interest in said composition.

285. Since prior to March 2, 1964, defendant has been infringing the rights of plaintiff in said musical composition by utilizing, assigning and licensing without permission the mechanical reproduction rights and by mechanically reproducing, manufacturing and selling mechanical reproductions of said musical composition.

286. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A FORTY-FIRST CLAIM

287. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 1, 2 and 3 as if fully set forth herein.

288. Prior to December, 1950 plaintiff created, composed and wrote the words and music in a musical composition entitled "MOTHER GOOSE PARTY". Said musical composition was new and wholly original with plaintiff and is copyrightable subject matter under the laws of the United States.

289. Between December 11, 1950 and January 2, 1951, PEER INTERNATIONAL CORPORATION complied in all respects with Title 17, United States Code, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said musical composition, and received from the Register of Copyrights a certificate of registration dated and identified as follows: "January 2, 1951, Class E, No. Ep 51850."

290. Since January 2, 1951, said musical composition has been published by PEER INTERNATIONAL CORPORATION and all copies made thereof have been printed, bound and published in strict conformity with the provisions of Title 17, United States Code, and all other laws governing copyright.

291. On or about July 26, 1955 said Peer International Corporation sold, transferred and assigned to the plaintiff any and all rights and copyrights held by it in the musical composition "MOTHER GOOSE PARTY" and in every part thereof, and all claims and causes of action for the use, licensing or infringement thereof.

292. By reason of the foregoing assignment, plaintiff, the original creator of the composition, became and now is the sole and exclusive proprietor of the said musical composition and of all rights and copyrights therein, and all claims and causes of action for the use, licensing or infringement thereof.

293. After about January, 1951 defendant infringed said copyright by utilizing, assigning or licensing without permission the mechanical reproduction rights, and by mechanically reproducing, manufacturing, distributing and selling mechanical reproductions of the aforementioned musical composition.

294. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

AS AND FOR A FORTY-SECOND CLAIM

295. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs numbered 1, 2 and 3 as if fully set forth herein.

296. Prior to December, 1950 plaintiff created, composed and wrote the words and music in a musical composition entitled "KATIE THE KANGAROO". Said musical composition was new and wholly original with plaintiff and is copyrightable subject matter under the laws of the United States.

297. On or about May 26, 1949, PAULL-PIONEER MUSIC CORP. complied in all respects with Title 17, United States Code, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said musical composition, and received from the Register of Copyrights a certificate of registration dated and identified as follows: "May 26, 1949, Class E, No. Ep 37225."

298. Since May 26, 1949, said musical composition has been published by Paull-Pioneer Music Corp. and all copies made thereof have been printed, bound and published in strict conformity with the provisions of Title 17, United States Code, and all other laws governing copyright.

299. On or about September 13, 1960 said Paull-Pioneer Music Corp. sold, transferred and assigned to the plaintiff any and all rights and copyrights held by it in the musical composition "KATIE THE KANGAROO", and in every part thereof, and all claims and causes of action for the

use, licensing or infringement thereof.

300. By reason of the foregoing assignment, plaintiff, the original creator of the composition, became and now is the sole and exclusive proprietor of the said musical composition and of all rights and copyrights therein, and all claims and causes of action for the use, licensing or infringement thereof.

301. After about May, 1949 defendant infringed said copyright by utilizing, assigning or licensing without permission the mechanical reproduction rights, and by mechanically reproducing, manufacturing, distributing and selling mechanical reproductions of the aforementioned musical composition.

302. Plaintiff has given defendant actual notice that it was infringing plaintiff's aforesaid rights in said musical composition, but said defendant has nevertheless continued thereafter to infringe plaintiff's copyright in said composition.

WHEREFORE, plaintiff demands

A. That defendant, its agents, servants and employees be enjoined during the pendency of this action and permanently from infringing the aforesaid copyrights of plaintiff in any manner.

B. That defendant be required to pay to plaintiff such damages as plaintiff has sustained in consequence of defendant's infringement of plaintiff's copyrights and plaintiff's common law rights in said musical compositions, and

that defendant be required to account and pay over to plaintiff all the gains, profits and advantages derived by defendant from its infringement of plaintiff's copyrights and common law rights in said musical compositions, or, at least in respect of the statutory copyright violations, such damages as to this court shall appear proper within the provisions of the copyright statute, but not less than the minimum amount provided for by law.

C. That defendant be required to deliver up to be impounded during the pendency of this action all the copies and mechanical reproductions in its possession or under its control, infringing plaintiff's aforesaid copyrights, and to deliver up for destruction all plates, molds, stampers, masters, matrices, tapes and all other instruments or devices for making infringing copies for mechanical reproductions of the aforesaid compositions.

D. That defendant pay to plaintiff the costs of this action and reasonable attorneys' fees to be allowed to plaintiff by this court.

E. That plaintiff have such other and further relief as may be just in the premises.

ZISSU, MARCUS & STEIN,
Attorneys for Plaintiff
Office & P. O. Address
292 Madison Avenue
New York, N. Y. 10017
Phone - MU 3-0966

By /s/ LEONARD ZISSU

Member of the Firm

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

MARION ROSETTE,

Plaintiff,

-against-

RAINBO RECORD MANUFACTURING CORPORATION and HAROLD E. MARKOWITZ and JACK BROWN doing business as RAINBO RECORD COMPANY, a partnership.

Defendants.

----------X

ANSWER TO COMPLAINT

66 Civ. 3864

The defendants, by ALFRED JAFFE, their attorney, answering the complaint herein, respectfully allege as follows:

1. Deny those allegations of the complaint set forth in paragraph marked "3", except admit defendant RAINBO RECORD CORPORATION is a corporation organized and existing and doing business under the Laws of the State of California.

2. Deny each and every allegation of the complaint set forth in paragraphs marked 9, 10, 11, 17, 18, 19, 25, 26, 27, 33, 34, 35, 41, 42, 43, 49, 50, 51, 57, 58, 59, 65, 66, 67, 73, 74, 75, 81, 82, 83, 89, 90, 91, 97, 98, 99, 105, 106, 107, 113, 114, 115, 121, 122, 123, 129, 130, 131, 137, 138, 139, 144, 145, 146, 149, 150, 151, 157, 158, 159, 165, 166, 167, 173, 174, 175, 181, 182, 183, 189, 190, 191, 196, 197, 198, 201, 202, 203, 208, 209, 210, 213, 214, 215, 220, 221, 222, 225, 226, 227, 232, 233, 234, 237, 238, 239, 244, 245, 246, 249, 250, 251, 256, 257, 258, 261, 262, 263, 268, 269, 270, 273, 274, 275, 280, 281, 282, 285, 286, 287, 293, 294, 295, 301 and 302.

3. Deny knowledge or information sufficient to form a belief as to those allegations of the complaint set forth in paragraphs marked 2, 4, 5, 6, 7, 8, 12, 13, 14, 15, 16, 20, 21, 22, 23, 24, 28, 29, 30, 31, 32, 36, 37, 38, 39, 40, 44, 45, 46, 47, 48, 52, 53, 54, 55, 56, 60, 61, 62, 63, 64, 68, 69, 70, 71, 72, 76, 77, 78, 79, 80, 84, 85, 86, 87,

88, 92, 93, 94, 95, 96, 100, 101, 102, 103, 104, 108, 109, 110, 111, 112, 116, 117, 118, 119, 120, 124, 125, 126, 127, 128, 132, 133, 134, 135, 136, 140, 141, 142, 143, 147, 148, 152, 153, 154, 155, 156, 160, 161, 162, 163, 164, 169, 170, 171, 172, 176, 177, 178, 179, 180, 184, 185, 186, 187, 188, 192, 193, 194, 195, 199, 204, 205, 206, 207, 211, 212, 216, 217, 219, 223, 224, 228, 229, 230, 231, 235, 236, 240, 241, 242, 243, 247, 248, 252, 253, 254, 255, 259, 260, 264, 265, 266, 267, 271, 272, 276, 277, 278, 279, 283, 284, 288, 289, 290, 291, 292, 296, 297, 298, 299, 300.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

4. That the compositions referred to in the complaint are in the public domain.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

5. That the action herein was not commenced within three (3) years after the causes of action accrued and are barred by the statute of limitations as set forth in Section 214 of the Civil Practice Law and Rules.

WHEREFORE, defendants herein demand judgment dismissing the complaint together with the costs and disbursements of this action.

ALFRED JAFFE
Attorney for Defendants
Office & P. O. Address
80 Wall Street
New York, N. Y. 10005
HA 2-0592

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- x

MARION ROSETTE,

Plaintiff,

-against-

RAINBO RECORD MANUFACTURING CORPORATION and HAROLD E. MARKOWITZ and JACK BROWN doing business as RAINBO RECORD COMPANY, a partnership,

Defendants.

- x

AMENDED ANSWER TO COMPLAINT

66 Civ. 3864

The defendants RAINBO RECORD MANUFACTURING CORPORATION and JACK BROWN by their attorneys, HOFER, RICH and GRUBMAN, for their amended answer to the complaint herein:

1. Deny those allegations of the complaint set forth in paragraph marked "3", except admit defendant RAINBO RECORD CORPORATION is a corporation organized and existing and doing business under the laws of the State of California.

2. Deny each and every allegation of the complaint set forth in paragraphs marked 1, 8, 9, 10, 16, 17, 18, 24, 25, 26, 32, 33, 34, 40, 41, 42, 48, 49, 50, 56, 57, 58, 64, 65, 66, 72, 73, 74, 80, 81, 82, 88, 89, 90, 96, 97, 98, 104, 105, 106, 112, 113, 114, 120, 121, 122, 128, 129, 130, 136, 137, 138, 143, 144, 145, 148, 149, 150, 156, 157, 158, 164, 165, 166, 172, 173, 174, 180, 181, 182, 188, 189, 190, 195, 196, 197, 200, 201, 202, 207, 208, 209, 212, 213, 214, 219, 220, 221, 224, 225, 226, 231, 232, 233, 236, 237, 238, 243, 244, 245, 248, 249, 250, 255, 256, 257, 260, 261, 262, 267, 268, 269, 272, 273, 274, 279, 280, 281, 284, 285, 286, 292, 293, 294, 300, 301 and 302.

3. Deny knowledge or information sufficient to form a belief as to those allegations of the complaint set forth in paragraphs marked 2, 4, 5, 6, 7, 12, 13, 14, 15, 20, 21, 22, 23, 28, 29, 30, 31, 36, 37, 38, 39, 44, 45, 46, 47, 52, 53, 54, 55, 60, 61, 62, 63, 68, 69, 70, 71, 76, 77, 78, 79, 84, 85, 86, 87, 92, 93, 94, 95, 100, 101, 102, 103, 108, 109, 110, 111, 116, 117, 118, 119, 124, 125, 126, 127, 132, 133, 134, 135, 140, 141, 142, 147, 152, 153, 154, 155, 160, 161, 162, 163, 169, 170, 171, 176, 177, 178, 179, 184, 185, 186, 187, 192, 193, 194, 199, 204, 205, 206, 211, 216, 217, 223, 228, 229, 230, 235, 240, 241, 242, 247, 252, 253, 254, 259, 264, 265, 266, 271, 276, 277, 278, 283, 288, 289, 290, 291, 296, 297, 298 and 299.

FIRST DEFENSE

AS AND FOR A COMPLETE DEFENSE TO ALL CLAIMS

4. The complaint does not state a claim upon which relief can be granted.

SECOND DEFENSE

AS AND FOR A PARTIAL DEFENSE TO THE 1st THROUGH 17th, 19th THROUGH 24th, 26th, 28th, 30th, 32nd, 34th, 36th, 38th, 40th, 41st and 42nd CLAIMS.

5. Any portions of said claims which accrued prior to November 15, 1963 are barred and unenforceable by the provisions of the Statute of Limitations set forth in Title 17, U.S. Code, Section 115(b).

THIRD DEFENSE

AS AND FOR A PARTIAL DEFENSE TO ALL CLAIMS.

6. Any portions of said claims which accrued prior to November 15, 1963 are barred and unenforceable by the provisions of the Statute of Limitations of the New York CPLR, Section 214, Subsection 4.

FOURTH DEFENSE

AS AND FOR A COMPLETE DEFENSE TO THE 1ST THROUGH 18TH, 20TH THROUGH 25TH, 27TH, 29TH, 31ST, 33RD, 35TH, 37TH, 39TH, 41ST and 42ND CLAIMS.

7. On information and belief prior to the time that the plaintiff registered or purported to register her claims to copyright in the Copyright Office of the United States pursuant to the provisions of Title 17, U. S. Code, with respect to each of the compositions referred to in each of the said claims as an unpublished work, either the plaintiff or others under license or authorization from the plaintiff did mechanically reproduce said compositions and produced, sold, published and widely and publicly disseminated the said reproductions, thereby dedicating the said composition to the public at large.

8. Upon the dedication to the public of each said composition as alleged in paragraph 7 hereof, the defendant as a member of the public had the right to press, use, reproduce, publish and sell each said composition without accountability to the plaintiff and any use of any said composition after the dedication thereof is not actionable by plaintiff.

FIFTH DEFENSE

AS AND FOR A COMPLETE DEFENSE TO THE 1ST THROUGH 18TH, 20TH THROUGH 25TH, 27TH, 29TH, 31ST, 33RD, 35TH, 37TH, 39TH, 41ST and 42ND CLAIMS.

9. By reason of the facts stated in paragraph 7 hereof, any copyright claimed by the plaintiff of any of the compositions mentioned in the aforesaid claims is invalid by reason of publi ion and dedication to the public prior to the securing of copyright.

SIXTH DEFENSE

AS AND FOR A COMPLETE DEFENSE TO THE 1ST THROUGH 18TH, 20TH THROUGH 25TH, 27TH, 29TH, 31ST, 33RD, 35TH, 37TH, 39TH, 41ST and 42ND CLAIMS.

10. On information and belief, plaintiff licensed or otherwise authorized certain persons to make mechanical reproductions of compositions mentioned in each of the aforesaid claims.

11. On information and belief, plaintiff failed to file with the Register of Copyrights notice of the use of said musical composition for mechanical reproduction thereof as required by Title 17, U. S. Code, Section 1(e).

12. By reason of the provisions of Title 17, U. S. Code, Section 1(e), plaintiff is barred from bringing a proceeding for the infringement of any of the copyrights of the said compositions.

SEVENTH DEFENSE

AS AND FOR A COMPLETE DEFENSE TO THE 1ST THROUGH 18TH, 20TH THROUGH 25TH, 27TH, 29TH, 31ST, 33RD, 35TH, 37TH, 39TH, 41ST and 42ND CLAIMS.

13. Plaintiff repeats and realleges the allegations

contained in paragraphs 10 and 11 hereof.

14. By reason of the provisions of Title 17, U. S. Code, Section 1(e), plaintiff is barred from bringing a proceeding for the infringement of any of the copyrights of the said compositions in all instances where the manufacture of the records occurred prior to the filing of Notice of Use for mechanical reproduction thereof.

EIGHTH DEFENSE

AS AND FOR A COMPLETE DEFENSE TO ALL CLAIMS.

15. On information and belief plaintiff licensed Lincoln Records Inc., Junior Records Corp. (also known as Junior Records Inc.) and Treasure Records Corp. (also known as Treasure Records Inc.) and some of them to reproduce mechanically the various compositions mentioned in the claims of the complaint and to make tapes therefrom.

16. On information and belief, the three corporations mentioned in paragraph 15 hereof or some of them borrowed money from Whitehall Mercantile Company and as security for the repayment of said loan pledged the aforementioned tapes made of the compositions mentioned in the claims in the complaint.

17. On information and belief, plaintiff consented to the pledge of the tapes to Whitehall Mercantile Company as aforesaid and agreed with the said Whitehall Mercantile Company that in the event the loans to the aforesaid three corporations were not repaid, Whitehall Mercantile Company, its successors and assigns, could possess itself of said tapes, mechanically

produce and reproduce records of the compositions on said tapes and vend and distribute the same without any payment by Whitehall Mercantile Company, its successors or assigns, to plaintiff or anyone claiming through plaintiff.

18. A default occurred in the repayment of the loans made by Whitehall Mercantile Company to the aforesaid three corporations or some of them and Whitehall Mercantile Company possessed itself of the tapes and the rights to use the same to which the plaintiff had agreed as is set forth in paragraph 17 hereof.

19. One Sid Taback, by mesne conveyances from Whitehall Mercantile Company, and for good and valuable consideration, purchased the aforesaid tapes and the right mechanically to produce and reproduce copies of said compositions without payment of any sort to plaintiff.

20. Any use which defendant may have made of any of the compositions mentioned in any of the claims of the complaint was only in the pressing of records containing some of the said compositions from the said tapes for Sid Taback.

NINTH DEFENSE

AS AND FOR A COMPLETE DEFENSE TO THE 19TH, 26TH, 28TH, 30TH, 32ND, 34TH, 36TH, 38TH AND 49TH CLAIMS.

21. The District Courts of the United States do not have jurisdiction to entertain the claims to which this defense is addressed.

TENTH DEFENSE

AS AND FOR A COMPLETE DEFENSE TO ALL OF THE CLAIMS.

22. By instrument dated November 10, 1953, plaintiff licensed Whitehall Mercantile Company and its assigns the irrevocable right to use the compositions mentioned in the various claims of the complaint in the manufacture and sale of records within and without the United States for the term of the life of the copyrights. Said arrangement was confirmed in a stipulation entered into in the Supreme Court of the State of New York, County of New York on December 14, 1960 in an action wherein Eichler Record Corp. was plaintiff and Junior Records, Inc., Marion Rosette, et al were defendants.

23. By instrument dated April 21, 1955 Whitehall Mercantile Corp. sold to Aaron Eichler 27 reels of magnetic tape on which were recorded 96 songs purporting to be the existing catalogue of Junior Records, Inc., 625 metal masters and mothers, stampers and lithographed sleeves, and also assigned to Eichler all of its right, title and interest in and to and under the aforementioned agreement dated December 10, 1953. The said 96 songs included the musical compositions which are the subject of plaintiff's complaint.

24. On April 20, 1960 Aaron Eichler entered into an agreement with Sid Taback, in which Eichler represented that he had the sole right, title and interest to the catalogue of Wenderland Records consisting of 96 songs (being the Junior Records catalogue acquired by Whitehall Mercantile Company as aforesaid which included the metal parts to manufacture the

records) and pursuant to the agreement Eichler sold all of said property to Taback, including the right to manufacture and sell records of said compositions made from said masters, mothers and stampers.

25. If Rainbo Record Manufacturing Corporation pressed records containing musical compositions which are the subject of this action it did so pursuant to the request and order of Taback, and said records were pressed from the masters, mothers and stampers acquired by Taback from Eichler, as aforesaid.

ELEVENTH DEFENSE

AS AND FOR A COMPLETE DEFENSE TO THE 1ST, THROUGH 17TH and 20TH THROUGH 24TH CLAIMS.

26. On information and belief the assignment by Lincoln Records Inc. to the plaintiff of the rights and copyrights held by it in musical compositions as alleged in each of the claims to which this defense is addressed was, if made at all, not in writing.

27. On information and belief, Lincoln Records Inc. has remained and is the owner of the rights and copyrights alleged to have been assigned to the plaintiff by it in the claims to which this defense is addressed and plaintiff does not have the title, right or standing to prosecute the said claims or any infringement of the rights as therein alleged.

WHEREFORE, defendant demands judgment dismissing

the complaint and for costs, disbursements and a reasonable attorneys' fee.

HOFER, RICH and GRUBMAN

By _____
A Member of the Firm

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TRANSCRIPT OF PROCEEDINGS BEFORE GURFEIN, D.J. ON OCTOBER 11 and 12, 1972

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARION ROSETTE, Plaintiff vs. RAINBO RECORD MANUFACTURING CORPORATION, HAROLD E. MARKOWITZ and JACK BROWN, d/b/a RAINBO RECORD COMPANY, a partnership, Defendants.	Before: HON. MURRAY I. GURFEIN, District Judge 66 CIVIL 3864

New York, October 10,11, 1972

STENOGRAPHER'S MINUTES

U.S. DISTRICT COURT
FILED
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Marion Rosette,

Plaintiff,

v.

Rainbo Record Manufacturing Corporation, Harold E. Markowitz and Jack Brown, d/b/a Rainbo Record Company, a partnership,

Defendants.

66 Civil 3864

October 10, 1972
10 a. m.

BEFORE:
HON. MURRAY I. GURFEIN,
District Judge.

APPEARANCES

ZISSU, MARCUS, STEIN & COUTURE, ESQS.,
Attorneys for Plaintiff,
Jerold L. Couture, Esq.,
of Counsel.

HOFER, RICH & GRUBMAN, ESQS.,
Attorneys for Defendants,
Arnold I. Rich, Esq.,
of Counsel.

- - -

(56)

THE CLERK: Marion Rosette against Rainbo Record Manufacturing Corporation.

Is Plaintiff ready?

MR. RICH: Your Honor, before we start- -

THE COURT: We have to start somewhere. Are you ready?

MR. RICH: Yes, but we have - -

MR. COUTURE: Excuse me, I am not ready. Mrs. Rosette is a little late. I believe the plaintiff wants to make a motion.

THECOURT: She can't make a motion until after I start the case.

Are you ready?

MR. COUTURE: Yes.

THE COURT: Now you may make the motion.

MR. RICH: As your Honor recalls, may law firm entered this law suit last summer, 1972. The law suit was originally commenced in November 1966 and then there were delays and I am not sure what happened, but it started again. We had asked for time to conduct certain discovery because there was no discovery. Virtually no discovery had been conducted by the defendants in this law suit and your Honor had said that since the case was on the calendar ready for trial that he would not permit any.

However, we were able to determine that there had been a prior law suit by the plaintiff in this action Marion Rosette against a company called Crown Records that had commenced sometime prior, a short time prior to the time this particular law suit was commenced in November of 1966.

That law suit was virtually identical to this particular law suit, except that there they claimed that Crown Records had infringed and in this particular law suit they claimed the defendants in this suit had had infringed the copyright, which are virtually the identical copyrights involved.

I was able to track down that file that had been marked dead for many years in the federal warehouse where they store these things and I saw various defenses that had been raised and we found that one of the defenses that had been raised by Crown Records in that law suit was that back in 1953 Junior Records, which was the record company, Mrs. Rosette's record company at that time, had pledged certain tapes and songs and masters, mothers and stampers which are used in the manufacture of phonograph records, had pledged it to a company called Whitehall Mercantile Company and that thereafter Whitehall had foreclosed a lien on these materials and Mrs. Rosette had signed an assignment

of these materials and compositions to Whitehall Mercantile Company and gave Whitehall and it's assignees the right to use these very compositions that are the subject of this law suit.

Thereafter Whitehall assigned it's rights under the agreement from Mrs. Rosette and assigned it to a gentleman named Aaron Eichler and Aaron Eichler had the right to manufacture and sell these various compositions.

Thereafter Mr. Eichler turned around and assigned these same compositions, which are the material, the mothers and stampers used to make the records themselves, assigned it to a gentleman named Sidney Taback. Sidney Taback is the one who had requested our clients the defendant Rainbo Record Manufacturing Company, who is the presser, to press these records.

That is the claim of infringement against us. If Mr. Taback had the rights from Mr. Eichler, who received it from Whitehall, who received it from Mrs. Rosette, then we have an absolute right to go ahead and press and there couldn't be any possible infringement.

All of this was the subject of that other law suit of Marion Rosette against Crown Records which had gone on for some time and then eventually was settled before trial. All of these documents that we received are

in the possession, I believe, of the attorneys for plaintiff and they are perfectly familiar with all of these things.

As a matter of fact, each and every one of the defenses that we are seeking to amend, to allege, were raised in that other law suit and the plaintiff is fully familiar with them.

I have papers here which I had copied from the federal warehouse file when I looked at that file. I have copies of those papers here which show your Honor that all these things have been alleged.

Now, the other thing, of course, that has not been alleged there is the transcript from Aaron Eichler to Sidney Taback who is the one that gave the order to the presser.

We received from an attorney in California who had represented Mr. Taback at that time, which goes back to April 1960, the original agreement between Mr. Eichler and Sidney Taback which gave him the right with regard to each and every one of these compositions. We just received that about a month or so ago.

So what we are seeking to raise here, as alternat defenses in our proposed amended answer, are things that the plaintiff is completely and fully familiar with and has known about it long before we ever knew about it.

Another fact. There was another law suit commenced by Aaron Eichler and Mrs. Rosette and her husband and Junior Record Company and other companies they were associated with in 1960 because they had various tapes and various compositions that he had bought from Whitehall and he claimed that Junior Records had been improperly using these same songs and there was a settlement. And I have a transcript of the settlement which was made in open court under which it was agreed that Mr. Eichler had the right to use these tapes and even sell them and do anything he wanted with them.

So this was done in open court in a suit in which Mr. Rosette was a party. So there is nothing new that we are seeking to allege here. And, as I say, we were quite fortunate in learning about this other law suit, the Crown Record law suit, and I understand that at the time that we served these amended pleadings, together with our conclusions of law and our amended pretrial memorandum Mr. Couture was away from New York on vacation, and he told me that this morning, that he just saw that when he came back on Saturday. However, I have a client here from California at very great expense and I would hope that your Honor would permit us to amend and to begin this morning. And if Mr. Couture needs wide latitude on cross-examination or wants to see any of these documents I have, I am

perfectly willing to show it to him just before the trail starts, but I know that these are all documents that he has seen before with the exception of the agreement between Mr. Taback and Mr. Eichler.

THE COURT: I will hear the other side.

MR. COUTURE. I have to oppose the service -- the motion, rather, your Honor. I comes as a complete surpris to me. If you recall at the time we set the date for this trail I found it inconvenient, though it was necessary for your schedule; inconvenient because I was going on vacation. I went on vacation September 7th and came back Friday night last.

Because of that is submitted my trial memorandum and my finds of fact and conclusions of law and the facts requested before I left September 8th or 9th, or so, and so my office sent it out. At that time I was prepared, as I had to be, to try the case this morning.

Upon my going to the office Saturday afternoon I found these papers and the amended answer that has eleven defenses instead of two, one of which in particular is very lengthy and involves a great deal of factual material involving Mr. Taback,with whom I have been unacquainted, though his name was mentioned in a deposition taken earlier. I had no idea of the extent of his involvement and I have

found it very difficult to prepare the case properly to meet these affirmative defenses.

The documents about which Mr. Rich has spoken and the facts surrounding them did come up in an earlier law suit involving Mrs. Rosette and Crown Records. That law suit, though, was settled in, I believe, 1967. It was begun in 1965. The papers to which Mr. Rich is referring, which according to his memorandum he intends to offer in evidence, first came up in a deposition taken of Mrs. Rosette in 1966, shortly after that the case was settled. I am not familiar at all with those papers.

THE COURT: Were you the lawyer in the other case?

MR. COUTURE: Yes, I was, but none of the defenses were raised in the suit. It wasn't expected by me when I prepared the case that I would face these.

If you check, your Honor, they are quite elaborate, raise new questions of law that I would like to brief. I didn't brief them before in the other case; we never got to trial.

THE COURT: The questions of law wouldn't bother me because you had time to do that, but the questions of fact --

MR. COUTURE: It is a matter of implementing

the trial, too, these legal questions; it is not merely finding precedents and citing them. They raise serious questions.

A couple of amendments I am sure are agreeable. One of them is to plead the federal statutory statute of limitations. Prior attorneys for the defendant had pleaded only the New York State. That's a mistake; that is quite all right.

THE COURT: Do you object to that?

MR. COUTURE: No, I don't object to that at all; that is certainly acceptable. However, the other ones raise new issues.

THE COURT: What do you say on the issue of prior publication defeating the copyright?

MR. COUTURE: That will require my discussing at length with the client the dates of the preparation of the material, her written material, the recording dates, all of that which she certainly will be examined on here, and I would like the opportunity to go over them with her.

If you should rule that the amendment requested is acceptable, can be served, then I would like an adjournment so I can prepare this. Not a long adjournment, but a week or two weeks - I don't know; just enough time.

As I said, I came to the office Friday night --

Saturday night I came to the office.

THE COURT: Yes?

MR. RICH: First with regard to the questions of the notice of use and the recordings, all that was in the prior law suit, and I have a copy of Mrs. Rosette's signed answers to written interrogatories.

THE COURT: I can't go too much on prior law suits. The question is --

MR. RICH: I mean it has all been documented.

THE COURT: It doesn't make any difference, but the question is under what theory are you trying the case. And what strikes me here is you have a pretrial order. This has gone beyond the mere pleading stage, or even the discovery stage. You have the definitive pretrial order which tends to say, or does say, indeed, what the issues are to be tried and apparently indicates that there is no further amendment to the pleadings, or that the pleadings are being amended. It says here that this is a pretrial order dated September 2nd, 1971, and Paragraph I says the pleadings were agreed to be deemed amended in accordance with the framing of the issues in this action in Paragraph 9 of this pretrial order.

Now, it seems to me that I don't want to be technical about what is an affirmative defense as against what

is a defect in the plaintiff's case. And if I have to lean over, I suppose I can say that certain things come within the plaintiff's burden of proof so that evidence can be admitted concerning them.

However, I certainly cannot do that with respect to a claim of title which is competitive with the plaintiff's. That raises an entirely new issue which certainly should have been pleaded in the affirmative defense.

MR. RICH: Your Honor, I don't believe anybody ever knew about this before.

THE COURT: I don't think that matters. The question is whether one is prejudiced. In other words, we are told that we should amend freely, which I believe in, but, on the other hand, we have rule 8(c) which provides for the pleading of affirmative defenses which were not pleaded, and the only reason for that is to give notice.

Now, when you get down to the point where you have a pretrial order which the courts have held as a binding sort of thing, it is difficult for me to see how the plaintiff is not prejudiced.

Now, I have a lot of discretion in the matter, I recognize, but I don't think since the case is a 1966 case, six years old, that I should permit an amendment which raises not a flaw in the plaintiff's case, but an affirmative

defense in every sense of the word in the defendant's case.

Now, what I am going to do is this: I am going to take your amended answer and I am going to divide it up into parts. I am going to allow the first defense because I think it is under the general issue, in any event.

MR. RICH: Your Honor, if I may say this --

THE COURT: Yes.

MR. RICH: As I say, this is a little bit different situation because these are all defenses that plaintiff and plaintiff's counsel at one time were fully and completely familiar with because the Crown Record --

THE COURT: That could be true. They may be familiar with it. Let me state it very quickly, Mr. Rich. They may be familiar with it, but they haven't had a chance to meet it, and that is a big difference. You are assuming that what you have is correct and nothing else.

Suppose, for example, there had been a re-conveyance by whatever his name is there. I didn't write it down.

MR. RICH: Taback.

THE COURT: Taback.

MR. RICH: Eichler.

THE COURT: Yes. Now, how would the plaintiff have an opportunity to prove conveyance in this case if the case started taking --

MR. RICH: It would only be if the plaintiff had perfect knowledge about --

THE COURT: There might be witnesses. You could have an oral reassignment under the copyright law. She could have a witness somewhere that she can't find now. However, it is an entirely different and separate issue.

I have made up my mind on this. Let me tell you what I am ruling and then we can go ahead.

I will allow the first defense.

The second defense I will allow because it deals with the statute of limitations in which there was a general statement in the pretrial order, so that is not novel.

The third defense is the same as the second defense in the original answer so I will allow that.

The fourth defense I technically will not allow as an affirmative defense dealing with publication, but you may raise the points by examination and cross-examination and then argue that proof of publication would defeat the prima facie case of the plaintiff, in any event.

The sixth defense I think goes to the question of the --

MR. COUTURE: What about the fifth, your Honor?

THE COURT: Well, the fifth goes with the fourth.

The sixth defense is difficult because it deals with a failure to file a notice of use. And I would suppose

that you can prove that, in any event. So I am going to allow the sixth defense.

MR. COUTURE: As a defense, your Honor?

THE COURT: And that goes for the seventh also.

MR. COUTURE: You are allowing them as defenses?

THE COURT: I am allowing them as defenses on the theory that even without defenses I think you can probably prove that.

Now, the eighth defense I will not allow for the reason I have already stated, that I think it would prejudice the plaintiff and in my discretion I will not allow it.

The ninth defense I suppose I have to allow because the jurisdiction of the federal court can always be raised.

The tenth defense I will deny for the same reasons as I gave for the eighth defense. When I say "deny," I simply deny the motion to amend the pleading.

Similarly I will deny the eleventh defense which deals with the ownership of the copyright in a third person.

All right. Now, let us proceed, gentlemen.

MR. RICH: Your Honor, may I just say this: Your Honor has ruled and just for the record I take exception.

THE COURT: You don't have to take exception, but I note that you were not happy about it.

MR. RICH: Right. And I also call to your attention

your Honor, that I served these amended pleadings with our memorandum of law and the proposed conclusions on September 15th, 1972. I know that unfortunately Mr. Couture was away from the office.

THE COURT: You made no motion. You wrote a letter.

MR. RICH: No, it was a motion, your Honor.

THE COURT: I have no motion. I had a letter on September 15th, but I must say in the letter you did say that if I suggest you make a motion you would do so. However, that was only a couple of weeks ago.

MR. RICH: Yes, but from experience before the case was submitted to them and they were going to try it.

For example, Judge Pollack most recently. He would say do not make a formal kind of motion, just call up.

THE COURT: I am not holding you at fault. I am explaining on the record, my friend, in a case six years old, in my discretion because I think it will prejudice the plaintiff, I will not allow it. And it doesn't make any difference if you did it by motion or letter; my ruling would be the same.

MR. RICH: Your Honor, if I also may, because I am now referring to answers to written interrogatories

signed by Mrs. Rosette in the case of Marion Rosette against Crown Records Company, in which she answers an interrogatory, and in that interrogatory -- I don't have the question here.

THE COURT: What are you trying to do now, reargue the motion?

MR. RICH: Your Honor, I am just trying to show these various things have been admitted. They are just admissions by her that these things took place and there isn't any issue. There is an admission by her on August 24, 1966 that Whitehall did have this agreement; that these tapes and masters and mothers and stampers were given to Whitehall; that Whitehall did foreclose on it.

THE COURT: You don't get the point. The point is that a fact may be a true fact, but if it is not told the the adversary as a theory upon which the party relies, it can effect great prejudice.

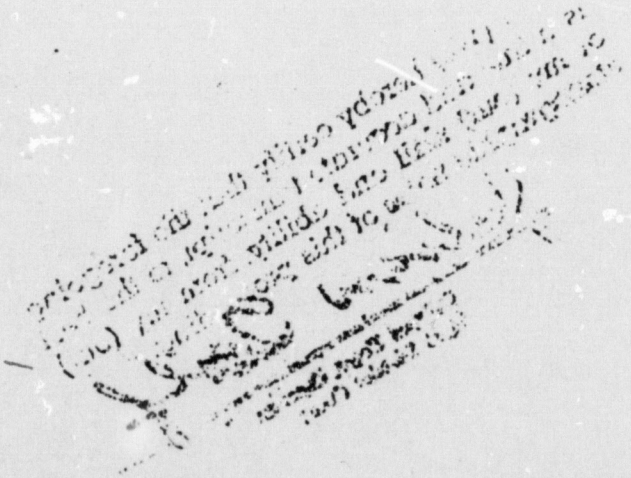
There are many true facts that are not admitted because the other party hasn't had a chance to controvert them. That is all that is involved.

MR. RICH: If I may say this: we served this on September 15th. My client, who is from California, came in for this trial today. If it would mean a day's adjournment, a short adjournment, I would be happy to give

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the other side all the documents I have.

THE COURT: Don't reargue motions; I don't like that. Let's get on with it. Start the case unless somebody has another motion.



MR. COUTURE: Actually an application, your Honor.

THE COURT: Yes.

MR. COUTURE: I have a memorial service for a client that is to take place at 4:30 this afternoon, can we stop at 4?

THE COURT: I will adjourn about a quarter to 4 but no earlier.

MR. RICH: I also have a simple problem. Judge Pollack in this other case has requested me to be in room 110 at 2 o'clock this afternoon.

THE COURT: Tell him you can't come. I will call him.

MR. RICH: If you could, because my adversary in that case had called Judge Pollack and he requested us to be there and I told him I was on trial before you. And his secretary said that Judge Pollack said I must be there and he is sure that Judge Gurfein will understand. I said all I can do is speak to Judge Gurfein.

THE COURT: How long will you be there for?

MR. RICH: My guess is 15 minutes or it could be a half hour.

THE COURT: No, I will call Judge Pollack later. We will reserve on that and see what develops.

MR. COUTURE: I would like to call Mrs. Marion

Rosette, please.

M A R I O N R O S E T T E, called as a witness, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. COUTURE:

Q Mrs. Rosette, are you the plaintiff in this action?

A Yes, I am.

Q Would you kindly tell the court your address?

A 1240 Park Avenue.

Q And your occupation?

A Pianist, composer, author.

Q Would you tell us briefly your professional education?

A Well, a perpetual scholarship at Peabody Conservatory. And got an artist's diploma and post-graduate degree, concertised. And then in connection with concert work I composed. Well, I have been composing all my life but I formulated them into records, into children's records, and my late husband joined me, having had an advertising agency and journalist and we formed a record company.

THE COURT: When did you form a record company?

THE WITNESS: Well, we began working on it in 1947.

I think it was begun in 1969. Between 1949 and '51 we completed the catalog.

THE COURT: What was the name of the company?

THE WITNESS: Lincoln Records.

THE COURT: Was that wholly owned by you and your husband?

THE WITNESS: Yes.

Q Could you tell us whether you belong to any professional societies or organizations?

A Yes, I am a member of ASCAP and Harry Fox Agency.

Q Have you received any awards or commendations?

A Yes, I just got an award for the tenth year in a row from ASCAP.

Q As a composer?

A Yes.

Q You stated that you became active in the record business in the late 1940s. For how long did you remain active in that business?

A Well, we stayed active until the death of my husband and since then the business has been dormant.

Q When did Mr. Rosette die?

A In 1966.

THE COURT: You kept Lincoln Records until 1966?

THE WITNESS: Not as Lincoln Records, various labels.

THE COURT: I am not talking about labels now, I am talking about corporate form. Did you have more than one corporation?

THE WITNESS: Yes, following Lincoln was Junior Records and Treasure Records and then my present corporation, Corona Records.

MR. COUTURE: Your Honor, the date of Mr. Rosette's death was 1966.

THE COURT: You may come forward, Mr. Rich, if you don't hear well.

Why don't you sit in the jury box? You are better off.

And try to speak up, Mrs. Rosette.

THE WITNESS: Yes, I will.

Q Were you active in the operation of the record companies?

A Well, not on the business end. I was the whole creative end. I didn't take part in the business transactions.

Q Did you in any industry sense specialize the record company?

A Well, I did all the work, lyrics, script, dialogue, coached the singers, conferred on the orchestrations and created them entirely.

Q I don't mean you in particular, I mean the

particular record companies with which you were involved, did they have a special line?

THE COURT: You should speak up a little louder, too.

A It started as only a children's line and then we encompassed an adult line as standard.

Q Initially were there other companies active in the children's line at that time?

A At the beginning?

Q Yes.

A Well, very few. Nobody had a catalog. Peter Mann had backgrounds, but nobody had the originals.

THE COURT: When you say originals what do you mean by that?

THE WITNESS: Well, entirely original songs or adaptations of the classic, where I would take a four-line verse and add 11 or 12.

THE COURT: Your standard work was not adopted or improved?

THE WITNESS: Very, very few in their original form, but rather elaborate orchestral arrangements.

THE COURT: Any of the titles named in the complaint title in which you did not do some kind of adaptation?

THE WITNESS: No.

Q You are familiar with the complaint, Mrs. Rosette?

A Yes, I am.

Q Are you the author of all the compositions in the complaint?

A Yes, I am.

Q Did you register all of the compositions for copyright at some time?

A Yes.

Q Personally?

A I imagine it was personally. I mean it was with my consent.

Q Were some registered however in the name of Lincoln Records, Inc.?

A Well, I was Lincoln. My husband and I were Lincoln, so we registered in the name of Lincoln and then we deemed it wiser to put them in my own name in case we were to take anybody else in the company.

THE COURT: I am not going to allow cavaliere testimony about copyright registrations where you rely on the statutory copyright. I would like to have documents in those situations.

MR. COUTURE: Yes, your Honor, I am going to introduce them now.

I don't know how fast you would like to do it

for economy sake.

THE COURT: I would suggest you both get together and apparently you haven't.

Don't you have a bunch of statutory copyright certificates?

MR. COUTURE: Yes, I do.

THE COURT: Let me see them. Mark them for identification.

Show them to counsel.

MR. COUTURE: Please mark for identification 22 certificates of registration for copyright in musical compositions.

THE CLERK: Mark them as one, your Honor?

THE COURT: Let me see them.

Mark them as one exhibit.

Are they all Lincoln Records?

MR. COUTURE: This group is, your Honor, because I have to treat them differently.

THE COURT: All right, 22 certificates of copyright of Lincoln Records.

xx (Plaintiff's Exhibit 1 marked for identification.)

THE COURT: Unless you need it now you can make that list in the recess.

MR. RICH: Your Honor, I have a list. I am checking

it now.

THE COURT: Try to do it quickly.

(Pause.)

THE COURT: Are you offering them in evidence?

MR. COURTURE: I shall, your Honor.

THE COURT: All right. Any objection?

MR. RICH: No, your Honor.

THE COURT: Received.

(Plaintiff's Exhibit 1 received in evidence.)

Q Mrs. Rosette, I show you Plaintiff's Exhibit 1 in evidence consisting of 22 copyright registrations and ask you if you are the author of the 22 songs contained in those 22 registrations?

A Yes, I am.

Q Are you at present the owner of the copyright in these 22 compositions?

A Yes.

Q I show you a document dated October 23, 1951, signed by Lincoln Records, Inc., its president John Bromley, Jr.?

A Yes.

THE COURT: What date?

Q And ask you to identify it.

A Yes, I am familiar with this.

THE COURT: Let me see it.

MR. COUTURE: It is the assignment, your Honor.

THE COURT: Are you offering it in evidence?

MR. COUTURE: With a little further identification, perhaps.

xxx (Plaintiff's Exhibit 2 marked for identification.)

MR. RICH: May I see it?

MR. COUTURE: I am not offering it yet.

Q Do you recall the circumstances under which that agreement was executed?

A Yes, I do. As I say, we copyrighted them in our company named Lincoln and it seemed wiser to have them in our personal name in case anybody came in so we had them transferred to my name.

Q Are the 22 compositions that are referred to -- I'm sorry, that are the subject of Plaintiff's Exhibit 1 in evidence the copyright registrations, contained in this assignment?

A Yes, sir.

MR. COUTURE: I offer it in evidence.

THE COURT: Well, I will receive it subject to the production of the agreement referred to therein which is the license agreement giving certain mechanical rights back to Lincoln. Have you got that?

MR. COUTURE: Yes, I do, your Honor. I have it. I don't know that it is relevant.

THE COURT: What?

MR. COUTURE: I don't know that it is relevant. It is concerned with copyright ownership.

THE COURT: I will determine the relevancy. Just show it to me. Have you got it?

(Paper handed to court.)

THE COURT: Mark that for identification.

(Plaintiff's Exhibit 3 marked for identification.)

Q Mrs. Rosette, I show you nine copyright registration certificates--

MR. RICH: May I see the other document marked for identification?

MR. COUTURE: Yes.

Q -- and ask you further the author of each of those compositions?

MR. RICH: May I just look at this before we go on?

THE COURT: Yes.

MR. RICH: I can't concentrate on this.

MR. COUTURE: It is not in evidence.

THE COURT: Just give him a chance to read it for a minute.

A Yes. Yes, I am.

MR. RICH: Can I have the last question and answer read?

THE COURT: She said she is the author of those.

Q Did you obtain a copyright registration for each of the songs?

A Yes.

MR. COUTURE: I offer in evidence nine copyright registration certificates.

MR. RICH: May I see them?

MR. COUTURE: Yes (handing).

THE COURT: Any objection?

MR. RICH: No objection.

xx (Plaintiff's Exhibit 4 received in evidence.)

THE COURT: Let me see it.

xx (Plaintiff's Exhibit 2 received in evidence.)

THE COURT: How about 3.

MR. COUTURE: I will offer Plaintiff's Exhibit 3 for identification into evidence.

MR. RICH: Your Honor, with regard to Exhibit 3 for identification, this appears to be a conformed but not an original document and it is Exhibit B to something. I don't know what that something is. And there may have been other terms with regard to this agreement that might give more light to this specific document. For the reason

it is not an original and the other reason I said, I object to it.

THE COURT: Ask the witness whether there was any additional document or other pages that have been cut off from this.

Q Mrs. Rosette, I show you Plaintiff's Exhibit 2 in evidence, the assignment from Lincoln Records to you of certain compositions and I show you Plaintiff's Exhibit 3 marked for identification and I ask you if this was the document referred to in Exhibit 2 --

THE COURT: That is not the question. The question is is that the complete agreement, or are there any other pages that are attached that previously were there.

Q If this was part of that agreement, and would you tell us if there were additional pages or additional agreements as part of this Exhibit 2?

A No, that is complete as far as I can see.

THE COURT: Do you have the original?

THE WITNESS: Yes.

THE COURT: Where is the original?

THE WITNESS: Isn't this the original?

Q I don't think it is, no.

THE COURT: The ribbon copy, I mean.

Q This is a conformed copy, your signature has been

typed?

A Yes.

Q Do you have anywhere the original of this?

A Let me see it again.

(Handing)

A No, I haven't.

THE COURT: I will overrule the objection on the ground that this is the best evidence.

MR. RICH: Your Honor, if I could at least ask for the document that this is attached to, which is an Exhibit B to some other document apparently.

THE COURT: It is apparently in another matter.

MR. RICH: I wouldn't know. It might give more light and meaning to this particular document.

THE COURT: It looks to me like a deposition or trial exhibit, is that it?

MR. COUTURE: He is referring to the marking up here.

MR. RICH: No.

MR. COUTURE: But the heading is Exhibit B. They call one an exhibit and one a schedule, but that is the A and B.

MR. RICH: At least I would like to see the whole agreement this came from. This apparently was marked in a

deposition, your Honor, in 1966.

THE COURT: Let me see the assignment.

Yes, apparently that is what happened. Schedule A is referred to in here as the list of the musical compositions under the life of the agreement. I suppose they made B the agreement itself.

MR. RICH: Your Honor, this apparently pre-dated the other document by a period of years -- two years. And this is Exhibit --

THE COURT: Let me see that. If you look at the acknowledgment down below.

It is the same thing. October 23, 1951. You took the recording date in the Copyright Office which is two years later but the execution date is 1951. It apparently wasn't filed.

I will receive it but I will entertain a motion to strike it at the conclusion of the case. Just make a note of it after we receive it.

xx (Plaintiff's Exhibit 3 received in evidence.)

MR. COUTURE: May I have the last question?

THE COURT: You offered in evidence the nine certificates.

Q Referring, Mrs. Rosette, to Plaintiff's Exhibit 4 in evidence, the nine copyright certificates, from the time

you wrote these compositions, considered individually, until the time you registered them for copyright were you the sole copyright proprietor of each?

A Yes.

MR. RICH: What are we talking about, which one?

THE COURT: Until now.

MR. COUTURE: I am asking from the time of the copyright to the time of registration. She said yes.

MR. RICH: I object.

THE COURT: It is a conclusion.

MR. COUTURE: It is difficult in this technical area.

THE COURT: You can ask her for facts.

MR. RICH: Just let the record note we are referring to Exhibit 4.

MR. COUTURE: Yes.

Q Referring again, Mrs. Rosette, to Exhibit 4 in evidence, did you assign the copyright ownership of any of these compositions to anyone?

A No, never.

Q At any time after writing them before you registered them for copyright?

A No, never.

Q Did you assign them to anyone following their

registration of copyright?

A I have never assigned my copyrights to anyone.

Q Since the assignment to you by Lincoln Records, Inc., of the 22 compositions which are Plaintiff's Exhibit 1 for identification, have you assigned any of those compositions to anyone?

A No.

THE COURT: Let me see that Exhibit 1.

MR. COUTURE: The nine?

THE COURT: 1.

Q Are you familiar with the song entitled Katie The Kangaroo?

A Yes.

Q Who is the author of that song?

A I am.

Q Did you originally register it for copyright?

A Yes.

Q To refresh your recollection, I show you a copyright registration certificate for that composition.

A Well, I understood they had sheet music rights but that didn't preclude --

THE COURT: I don't hear a word you are saying.

Q The question is, who is the original copyright proprietor of that song?

A I was the original copyright proprietor.

Q Who is the person who first registered it for copyright?

A I understood Lincoln had, but I believe they had sheet music rights.

THE COURT: You believe they had what?

THE WITNESS: Sheet music rights.

But it wasn't put on sale. I got it back again.

MR. RICH: Your Honor, I move to strike the answer as being not responsive to the question.

THE COURT: Strike the answer. Start again.

Who is Paull-Pioneer Music Corporation?

A It was a sheet music firm.

THE COURT: A sheet music firm?

THE WITNESS: Yes.

THE COURT: Did you own any of it?

THE WITNESS: No.

THE COURT: Did you ever give them the right to file a copyright registration on a song of which you were the owner?

THE WITNESS: Yes.

THE COURT: Composition, rather. Was one of those compositions Katie The Kangaroo?

THE WITNESS: That's right.

THE COURT: Is that what this reflects?

THE WITNESS: Yes.

THE COURT: In other words, was this done with your permission?

THE WITNESS: Yes, it was and it was returned to me.

Q Did a time come when --

xx (Plaintiff's Exhibit 5 marked for identification.)

MR. RICH: May I see that?

MR. COUTURE: May I finish the line, your Honor? When I put it in evidence I will show it all to counsel.

THE COURT: Yes, go ahead.

Q Did a time come when Paull-Pioneer Music Corporation assigned the composition to you?

A No, Paull-Pioneer transferred -- I think they -- I don't know whether they failed or went out of business, they assigned their assets to Shawnee Music and Shawnee returned it.

Q I see.

MR. RICH: Your Honor, I object to that. I think it has gone well beyond the question.

THE COURT: What document have you got there?

MR. COUTURE: I have the copyright certificate. Then I have the assignments from Shawnee Press to Marion

111a

Rosette of this song, that there was a mean conveyance from the original copyright proprietor to Shawnee Press which accompanied the copyright assignments.

THE COURT: Let me see it.

You have no recording of the mean conveyance by the copyright owners?

MR. COUTURE: No, I don't. An attempt was made a couple of years ago to search all the papers and it wasn't turned up. I don't recall that a specific request was made for it.

THE COURT: All right, I will receive these subject to any legal argument that may develop on it.

MR. COUTURE: Counsel hasn't seen it yet.

THE COURT: Have you seen it?

MR. RICH: No.

THE COURT: I thought you had. I will reserve on that until you look at it and you may want to object.

MR. COUTURE: Shall they be offered separately, your Honor?

THE COURT: I think you should offer them separately, but wait until Mr. Rich sees them, Mr. Couture.

MR. COUTURE: Yes.

MR. RICH: Your Honor, I would object to this being marked in evidence because there isn't any documentation

which would show the conveyance from Paull-Pioneer Music to Shawnee Press. What we have here is a registration in the name of Paull-Pioneer Music Corporation and we have a letter dated August 31, 1960, from Shawnee to Mrs. Rosette referring to the fact that they are giving her I assume whatever rights they have in this composition and a certificate that an assignment was recorded in the Copyright Office. So that there isn't any indication that Shawnee Press had anything to give to Mrs. Rosette.

THE COURT: I guess you're right, because under the Act any assignment has to be shown by an instrument in writing signed by the proprietor under Section 28 and that is not shown here so you have a gap in the title.

Why don't you reserve on that and maybe you can find something, I don't know.

MR. COUTURE: Yes, I shall.

THE CLERK: Do you want those marked?

MR. COUTURE: Mark them in evidence separately.

THE COURT: Before you mark them I will tell you which one I am excluding.

Do you have the agreement of April 28, 1949, between Mrs. Rosette and Paull-Pioneer Music Corporation?

MR. COUTURE: No, I don't, your Honor.

THE COURT: Mark each of these for identification

separately.

MR. COUTURE: That agreement won't close the gap.

THE COURT: It might tend to close it.

MR. COUTURE: I think the contract tends to close it.

THE COURT: No, it lifts itself by its bootstraps because you just don't know what right Shawnee Press had.

THE WITNESS: Paull-Pioneer went out of business.

THE COURT: That is the gap we have here.

THE WITNESS: They asked for a license of that one number.

THE COURT: The difficulty here under a statutory copyright you have to have the assignment in writing. Unless you have the instrument in writing, I can't recognize it. There may have been an assignment in writing, but I just don't know.

xx (Plaintiff's Exhibit 6 marked for identification.)

xx (Plaintiff's Exhibit 7 marked for identification.)

MR. COUTURE: As Mrs. Rosette said, it was the acquisition of some huge catalog of God knows how many compositions were acquired by Shawnee.

THE COURT: I don't hear you.

MR. COUTURE: It was a huge acquisition by Shawnee of Paull-Pioneer's catalog.

THE COURT: How do you know?

THE WITNESS: It was published. That is how I know about it.

THE COURT: You may proceed.

MR. RICH: When you say received, your Honor, is that for identification?

THE COURT: 6 and 7 for identification have been excluded. 5 is the exhibit in evidence.

(Plaintiff's Exhibit 5 received in evidence.)

Q Did you at any time, Mrs. Rosette, following the assignment to you from Shawnee Press of Katie The Kangaroo assign your rights in that composition to anyone?

A No.

Q Do you still retain copyright in that composition?

A Yes.

MR. RICH: I object to that as a conclusion, your Honor.

THE COURT: Yes, strike that.

Q I ask you, Mrs. Rosette, if you are familiar with the composition entitled Mother Goose Party?

A Yes.

Q Who is the author of that composition?

A I am -- author and composer.

Q Could you tell us who first registered that

composition for copyright?

To refresh your recollection, I show you this copyright certificate.

THE COURT: I would like to make a suggestion, Mr. Couture. If you mark it for identification first and show it to me since there is no jury I will follow the questions a little bit better.

MR. COUTURE: Yes, sir.

THE COURT: Mark it for identification.

xx (Plaintiff's Exhibit 8 marked for identification.)

Q I show you Plaintiff's Exhibit 8 for identification and ask you to tell us who is the original copyright registrant, claimant in the composition Mother Goose Party.

A I believe it was on the original Lincoln list, but I believe they wanted sheet music rights and it was returned to me and it wasn't published.

MR. RICH: Your Honor, I object.

THE COURT: I didn't hear. Speak up.

THE WITNESS: I am under the impression it was on the original list but they wanted it for sheet music but it wasn't published and we had it returned to us.

Q Are you the author of that composition?

A Yes.

Q Did you authorize Peer International to copyright

the song for you?

A Yes.

Q Did a time come when Peer International assigned the work to you?

A Yes. You have the assignment, don't you?

xx (Plaintiff's Exhibit 9 marked for identification.)

MR. RICH: Your Honor, I would object for two reasons. First is there no --

THE COURT: Object to what? There are two of them floating around.

MR. RICH: Sorry. With regard to Exhibit 9, this is the letter from Peer International to Lincoln Records dated July 26, 1955. This purports to transfer rights to the composition Mother Goose Party. There isn't any assignment of any copyright in this letter. Secondly, this is a letter from Peer International to Lincoln Records and there is nothing, at least nothing has been shown so far to show any written assignments to Lincoln Records.

THE COURT: You can argue that later. You will have sufficient time. Just make a note of it.

MR. RICH: Also it is not acknowledged in the ordinary course.

THE COURT: I will receive it in evidence.

MR. COUTURE: I would just like to remark on that,

your Honor, though the assignment is from Peer International to Lincoln Records, Inc., Lincoln Records, Inc., in Exhibit 2 assigned that composition to Mrs. Rosette.

THE COURT: Yes, but they did it earlier. This is 1955.

MR. COUTURE: At a later date. I would argue it takes effect when it happens, all the rights in the song present and future.

MR. MICH: This is what I don't understand. Peer International owned it at that time, but this is one of the reasons why I was objecting to that assignment, because it seemed to refer to other things, your Honor.

THE COURT: Well, the record is unclear as to when Lincoln Records was dissolved.

Do you have any evidence on that?

MR. COUTURE: I don't, your Honor. You mean if Lincoln Records was dissolved before 1955 then this wouldn't be effective to Mrs. Rosette?

THE COURT: No, the owner, Mrs. Rosette could pick it up at the transfer or liqidation of the corporation, but then if the corporation remains she doesn't have it, it belongs to the corporation. Except I don't think it makes much difference if she continues to own it.

Did you ever own the stock of Lincoln Records?

THE WITNESS: No.

THE COURT: Was there ever a dissolution of Lincoln Records?

THE WITNESS: I didn't think it ever functioned.

THE COURT: Was it ever dissolved?

THE WITNESS: They wanted us to move down to Philadelphia and we wouldn't and I don't believe it ever functioned.

xx (Plaintiff's Exhibit 8 and 9 received in evidence.)

THE COURT: Reserve your right to argue these later.

MR. RICH: In any event, your Honor, with regard to Exhibit 9 I was pointing out that Exhibit 9 states the assignments from Lincoln Records to Mrs. Rosette, so in any event we do not have a document at the time Peer International owned this.

THE COURT: I noticed that myself. You make a note of it now so you won't forget.

MR. COUTURE: 8 and 9 are in evidence?

THE COURT: Yes.

MR. COUTURE: Bear with me a moment, your Honor. I was looking for notes I have on the corporation, Lincoln Records matter.

THE COURT: Let me ask you something. If I

gave you a 15-minute recess do you think you fellows could get together and put in documents in a package? Do you have much more to go?

MR. COUTURE: That was all.

THE COURT: You put them all in now?

MR. COUTURE: Yes. I just want to ask Mrs. Rosette about this.

THE COURT: Go ahead. I just wondered if there were other registration certificates.

MR. COUTURE: I will then go into the purchase of the records and so on.

Q Mrs. Rosette, subsequent to the assignment to you -- I'm sorry, subsequeht to the time you received copyright ownership of Mother Goose Party, did you assign the copyright in that work to anyone?

A No.

Q At any time?

A No.

Q Did you or anyone on your behalf file with the register of copyrights notices of use for the compositions which are the subject of this lawsuit?

A Yes.

THE COURT: There are a lot of compositions. Are you breaking it into more than one question, Mr. Couture?

MR. COUTURE: Yes, I am.

THE COURT: Let me say this. Again you didn't follow my advice. If you marked it for identification and showed it to her I would understand what you're asking about.

MR. COUTURE: You will notice there are many compositions not involved.

THE COURT: I don't notice anything until I look at it.

MR. COUTURE: Many compositions not involved in the lawsuit are a part of those.

xx (Plaintiff's Exhibit 10 marked for identification.)

THE COURT: You are going to relate eventually the compositions with dates as to which the notice of use was recorded as against those which appear in the various claims in the complaint, right?

MR. COUTURE: I think that that is a defense, your Honor.

THE COURT: What?

MR. COUTURE: I think that is a defense.

THE COURT: I am not talking about a defense. I just want to know what I am doing. You have "Did you ever see a Lassie," is that one of the things involved in this case?

MR. COUTURE: No.

THE COURT: Are all the 33 compositions which are alleged in the complaint to have been infringed the subject of Exhibit 10 for identification.

MR. COUTURE: Yes, sir.

THE COURT: Or named therein.

MR. COUTURE: Yes, sir.

THE COURT: In connection with these notices of use, right?

MR. COUTURE:Yes, sir, they are.

THE COURT: Show it to Mr. Rich.

MR. RICH: Your Honor, I haven't had the opportunity to see all this over here, but I do recognize titles that are on Exhibit 10 for identification. However, glancing through it, I see most of the titles are here and certainly for those titles, whatever titles are on here, I have no objection to having it marked.

THE COURT: Received.

xx (Plaintiff's Exhibit 10 received in evidence.)

MR. COUTURE: Shall I mark the records individually, your Honor, for identification?

THE COURT: No, I think put them in a batch.

MR. COUTURE: 13 long playing phonograph record albums.

THE COURT: Describe them a little more for the record.

Under what label are they?

MR. COUTURE: Four of which are under Carousel label and the remaining nine on the Playtime label.

xx5 (Plaintiff's Exhibit 11 marked for identification.)

THE COURT: These are records on which you claim infringements?

MR. COUTURE: Yes.

Q Mrs. Rosette, I show you 13 long playing phonograph record albums, being Plaintiff's Exhibit 11 for identification and ask you whether you can identify them.

A Yes, I can. I think I marked on the back of those which albums were my compositions and my productions of them.

Q Are these albums you purchased?

A I purchased some and the others my late husband brought back from distributors that we shared in common.

THE COURT: Who?

THE WITNESS: Distributors thatwe shared in common.

Q Who is we?

A Well -- my -- our company and the company that produced these records. We are using the same distributor and my late husband brought back cartons at a time and we found them there.

THE COURT: Have you got the dates when you got them?

THE WITNESS: I think it was always around 1963, '64, around that time. And I purchased some in the Liberty Shops in New York.

MR. COUTURE: Please mark this as Plaintiff's Exhibit 12.

xx7 (Plaintiff's Exhibit 12 marked for identification.)

THE COURT: I notice you have different dates in connection with your notice of use.

MR. COUTURE: Yes.

THE COURT: You will have to relate the notice of use date to the date of the alleged infringement to show that the alleged infringement was after the notice of use.

MR. COUTURE: Or continued after.

THE COURT: What?

MR. COUTURE: Or continued after.

THE COURT: Well, or continued after, yes. Does Exhibit 12 for identification have a date on it?

MR. COUTURE: It does, your Honor, December 22, '54, I believe.

THE COURT: The notations that appear on Exhibit 12, Mrs. Rosette, in red ink, is that your handwriting, are they yours?

THE WITNESS: Yes, they are. That is my handwriting.

THE COURT: Let me see Plaintiff's Exhibit 10.

MR. COUTURE: The great bulk of the notices of use were filed in 1961.

Q I show you a receipt from a Liberty Music Shop which is Plaintiff's Exhibit 12 for identification, Mrs. Rosette, and ask if this is your receipt?

A Yes, it is.

Q How did you come by it?

A I stopped in to look at records generally and I saw this on the counter and inquired about it and bought it.

Q You saw which album?

A Alice In Wonderland. The album was called Alice In Wonderland but everything in it is mine.

Q Can you tell the serial number from the sales slip?

A No.

THE COURT: It does?

THE WITNESS: Oh, yes, 112.

Q I show you album of Playtime, 112, from Plaintiff's Exhibit 11.

A Yes.

Q And ask you if this is that album?

A This is the album, yes.

Q Are there compositions in that album which you claim to infringe your copyrights?

A The entire is mine and my productions of them.

Q How many is that entire album?

A Eight.

THE COURT: Eight compositions?

THE WITNESS: Yes.

Q The date of this --

THE COURT: Mark that record separately under that Exhibit 11 for identification. Mark it A as long as you are talking about it.

(Plaintiff's Exhibit 11A marked for identification.)

xx

THE COURT: I am calling that the Alice In Wonderland record. What label is that?

MR. COUTURE: Playtime 112.

Q The date on the sales slip is December 22, '64. Does that help you in ascertaining --

THE COURT: '64 or '66?

MR. COUTURE: '64.

Q Does that date help you in ascertaining when you acquired the other records which are Plaintiff's Exhibit 11?

A More or less around the same time. Of course it alerted me and I was on the lookout for them after that. My late husband found some and I found some.

Q Can you give us a time within six months --

accurate within six months of when you acquired these?

A I would say approximately around the same time and then I found them advertised in the Schwann catalog.

Q Can you be specific about any particulars of the albums as to when you acquired them?

A No, it would be hard to say.

Q You referred earlier to your husband's having found them at his distributors.

A Yes.

Q Could you elaborate on that?

A Well, it wasn't hard to identify them, they were right there and my husband visited distributors from time to time and found them.

MR. RICH: Objection, she is talking about somebody else acquiring something. She has no knowledge.

THE COURT: Yes, the question is did your husband bring back the records.

THE WITNESS: Yes, he did.

THE COURT: And do you remember which ones they were?

THE WITNESS: Not by number, no.

THE COURT: Not by number, but by composition?

THE WITNESS: There are so many compositions involved in each album, he would sometimes bring back 10 or 12 albums.

MR. RICH: Your Honor, I object to this whole line

of questioning and these answers. This is all hearsay. She is talking about her husband acquiring records from his distributors and she apparently has no knowledge except her husband might have given it to her.

THE COURT: It is hearsay how he got them. It isn't hearsay as to whether she saw them.

MR. RICH: I agree.

MR. COUTURE: They were in the record business together and his acquiring the phonograph records from the distributor.

THE COURT: That doesn't make any difference. As long as they were in existence, they were infringing. Now, the question is which ones. Are any of those in Exhibit 13 records that your husband brought to you?

THE WITNESS: Yes.

MR. COUTURE: Exhibit 11.

THE COURT: I mean Exhibit 11. Some are?

THE WITNESS: Yes.

THE COURT: Can you tell which are which?

THE WITNESS: No, I can't.

THE COURT: Can you tell what span of time they covered?

THE WITNESS: I would say approximately two or three years.

Q Before or after the date that we have fixed, December 22, 1964? You have to be as specific as you possibly can because it is a very important thing.

A I don't think I found many after that. I finally gave up looking, but I understand Goody's were carrying them as late as 1957.

MR. RICH: Objection, your Honor.

THE COURT: Yes, strike that out. We simply must get a little better recollection, if possible, on what -- in what years at least you picked up these records and which ones because the certificates of notice of use registered in the Copyright Office have different dates on them with respect to different compositions.

Is there any event that in your mind would remind you of something, that would give you a year?

Have you gone over this with the plaintiff?

MR. COUTURE: We have, your Honor, and she was more specific.

Q Does it help to call your attention to the fact that December 22, 1964, is Christmastime?

A December 24, '62?

THE COURT: No, December 22nd, '64, three days before Christmas. Does that refresh your recollection in any way?

A When I bought this one? I don't know whether I already had some or began to buy them later. I don't know. It was all approximately about this same time.

Q Was that true of all these records?

A Yes.

Q Approximately the same time?

A Yes.

THE COURT: Would that mean 1964 or1965, is that your best recollection?

THE WITNESS: No, I would say earlier than that. I think I gave you a whole carton of them earlier than that, didn't I?

MR. RICH: Your Honor, there seems to be colloquy going back and forth with the witness. Also the witness I believe testified just a little while ago that she didn't believe that any were purchased after the date in December, 1964, and it might have been purchased two years before that. You asked about a range and she said two years and then she said it couldn't have been after that time because she was very annoyed or whatever it was that she said. But she did mention a two-year span.

MR. COUTURE: Are you testifying for the witness now?

MR. RICH: No, because what we are doing here, the witness has already testified and the way I understood it

was two years prior to that time and now there seems to be an attempt to refresh the witness' recollection after the witness has already testified.

MR. COUTURE: Exactly.

THE COURT: All we are trying to do is to see if we can get at the approximate truth. We can't get the exact dates, obviously, there are no writings. What we have to do is delve into the memory of Mrs. Rosette and try to find out if she recalls when these recordswere obtained by her.

THE WITNESS: I would say within a span of between 1962 and '64, something like that.

THE COURT: '62 to '64.

THE WITNESS: Maybe '65.

Q You did acquire some after this purchase?

A I think George might have brought some home later than this.

Q Some --

MR. RICH: Objection, your Honor, this is obviously speculation. She thinks it may have happened.

THE COURT: Yes, strike it out.

A Have you the Schwann catalog?

Q Yes.

THE COURT: Show the witness anything that will

refresh her recollection.

MR. COUTURE: Yes, your Honor. In the file is the Schwann catalog which was handed up on an argument of a motion to dismiss earlier.

THE COURT: To me?

MR. COUTURE: I saw it in the file in your chambers a month ago. If I might look at that for a moment.

THE COURT: When was the motion to dismiss?

MR. COUTURE: Early on.

THE COURT: Before me?

MR. COUTURE: No, before Judge Ryan.

THE COURT: Did you find it?

MR. COUTURE: Yes.

I would like to mark it for identification.

(Plaintiff's Exhibit 13 marked for identification.)

(Recess.)

THE COURT: All right, I straightened Mr. Rich out with Judge Pollack, so he is excused at 2. But I am going to let you go at ten minutes of 4 so you can be there at 4:30.

MR. COURTURE: Thank you, your Honor.

M A R I O N R O S E T T E, resumed.
DIRECT EXAMINATION CONTINUED
BY MR. COURTURE:

Q Mrs. Rosette, I hand you Plaintiff's Exhibit 13

for identification being the Schwann record catalog under date of December, '64. Can you identify that?

A Yes, I purchased that.

Q You purchased it?

A Yes.

Q About when did you purchase it?

A December, '64.

Q You will note that in the book itself there are certain markings in red ink. Do you know who made those markings?

A I made them. They are all reproductions of my own.

Q Are you familiar with the Schwann catalog and its use in the industry?

A Yes, it is available in every record shop or record department and the implication is that the records are available either at once or by order in large quantity.

Q For the purpose of --

MR. RICH: Your Honor, I object to that answer as being outside the knowledge of this witness.

THE COURT: Overruled. It is the custom in the trade she is testifying about. She's been in the trade.

MR. RICH: Your Honor, that is not my understanding of a Schwann catalog.

MR. COUTURE: Are you going to testify?

MR. RICH: I am not testifying.

THE COURT: In your experience when you see something in the Schwann catalog and you order it do you generally get it?

THE WITNESS: Oh, absolutely.

THE COURT: All right.

MR. RICH: Your Honor, on the voir dire.

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. RICH:

Q Have you ever placed any listing in the Schwann catalog?

A We never advertise in the Schwann catalog.

Q Do you know anybody who lists in the Schwann catalog?

A I recognize the company. I know the catalog.

Q Did you or any company with whom you were associated put anything in the Schwann catalog?

A Well, Pickwick did.

Q You are associated with Pickwick?

THE COURT: With who?

THE WITNESS: Pickwick Records.

Q Pickwick. Are you associated in some way with

Pickwick?

A I know some of the personnel. They used some of my single records, yes.

Q Answer my question, please.

A Yes.

Q Have you or any company with which you are associated, Junior Records, Treasure Records, Lincoln Records or any other company that you were associated with ever list anything in the Schwann catalog?

A No, I said we didn't.

Q Have you ever purchased anything that was listed in the Schwann catalog through Schwann?

A Not through Schwann. You don't purchase it through Schwann, you purchase it in the record store.

Q Have you ever utilized the Schwann catalog for the purchase of any of your records that you owned or your company owned personally or otherwise?

A Well, if we didn't advertise how could I?

MR. COUTURE: The preface deals with that.

A It is the general catalog for the trade. And the understanding is that any --

THE COURT: Yes, I will adhere to my ruling. I will let it in on the theory that these records are available from the catalog. Nobody puts out a catalog

as something he can or cannot sell.

MR. RICH: That is not necessarily so, your Honor, and that is why I am arguing this point.

My understanding with regard to the Schwann catalog is that Schwann may be listing things years after somebody may have originally listed it with them.

THE COURT: It doesn't say so in the introduction to the preface which I assume is correct.

MR. RICH: I have not seen the catalog before you, your Honor.

MR. COUTURE: Yes, I showed it to you before the break.

MR. RICH: Yes, I had it about three seconds and you took it away and you said "I have to go over it with Mrs. Rosette."

THE COURT: You can read this here.

MR. RICH: Yes. Your Honor, if somebody listed records in 1960 Schwann might continue to carry it for years afterwards even though the records are no longer available. And the witness testified earlier as if she was familiar with the Schwann catalog. I think I have shown on voir dire that she never placed anything in the Schwann catalog and knows nothing about it. Therefore, I do object to the introduction of the Schwann catalog because it doesn't

mean those records were available at that time or any records contained in the Schwann catalog are available at the time the catalog is printed and released.

THE COURT: You can show they were not available, the big ones, but I assume they were available.

MR. COUTURE: With regard to this particular listing, I think there is an asterisk at some point there that indicates that the records will not be available after they run out. I suggest a knowledge of its listing on the part of the Playtime Carousel label.

THE COURT: It is obvious if the record is not available they will delete it. Of course, they might make a mistake,but I have got to take the policy as indicating these are records available.

MR. RICH: Your Honor, that is not what it says. It says "Don't get in touch with us, get in touch with the manufacturer."

THE COURT: Not the manufacturer, the dealer.

MR. RICH: May I see the catalog?

MR. COUTURE: When she finishes.

THE WITNESS: Isn't there a footnote on one of the pages?

THE COURT: Is it your defense that you weren't pressing these records? I thought the defense was that you

were pressing them.

MR. RICH: Your Honor, what we said was we pressed -- and this was in interrogatories -- some records back in 1960. We were just one presser. I don't know how many pressers Carousel and Playtime had. We pressed records. They weren't only these records. Playtime and Carousel had other records, too. And we pressed records back in 1960. What they are trying to show is that because you can go in to Sam Goody's and buy a record today that might have been available 20 years ago that the record is still being pressed and sold. And one doesn't follow from the other.

When records are manufactured, they are manufactured in some kind of quantities at some point. Thereafter, they are sold and they might be sold years later in dribs or drabs of 10 or 20 or a hundred or five or one or nothing.

THE COURT: You should have records as to when they were pressed and when they were not pressed, when they were sold.

MR. RICH: Your Honor, we are not the company, we are the presser.

THE COURT: I say the presser should know what he pressed.

MR. RICH: Your Honor, one of the things we will show here -- it is no surprise, we discussed it before --

is that back in I think the beginning of 1967 -- and we have records to show it -- there was a flood in which a lot of claims were made, records were destroyed, albums were destroyed, we have a whole bunch of correspondence to show this, claims of insurance companies because of destroyed phonograph records and albums and jackets and so on.

THE COURT: I understand your objection. What difference does it make unless there was proof that was the actual number of records and the times and the sales? Plaintiff can't prevail just by showing a catalog.

MR. RICH: They are putting this in, your Honor, to show that records were still being manufactured and sold in 1964. What I am saying is that the Schwann catalog would never show this. I believe -- and I don't know really one way or another, I couldn't testify to it either way, but it is certainly possible that if you list something in the Schwann catalog in one year it will continue on until it is deleted by the manufacturer.

THE COURT: I will accept this subject to proof of that kind by you. Let's get on with the next point.

MR. RICH: I couldn't tell, your Honor.

MR. COUTURE: You have a record man here who can testify.

THE COURT: It is received.

(Plaintiff's Exhibit 13 received in evidence.)

THE COURT: 11 and 12 have not been offered.

MR. COUTURE: No.

I offer Plaintiff's Exhibits 11 and 12 in evidence.

THE COURT: Any objection?

MR. RICH: I have no objection to introducing this.

THE COURT: All right, 11 and 12 received in evidence.

(Plaintiff's Exhibits 11, 11A and 12 received in evidence.)

BY MR. COUTURE:

Q Have you listened to these phonograph records, Mrs. Rosette, which are Plaintiff's Exhibit 11 in evidence?

A Yes.

MR. COUTURE: Off the record.

THE COURT: Yes.

(Discussion off the record.)

THE COURT: Have you listened to all these records, Exhibit 11?

THE WITNESS: Yes, I have.

THE COURT: Do you recognize each and every one of them as your compositions?

THE WITNESS: Yes, I do.

THE COURT: Are there anywhere, although the composition is the same, the title is not precisely the same as your title?

THE WITNESS: No, they disguised some of the titles. Santa Clause Is Flying Through The Sky called Flying Through The Sea.

THE COURT: Pick out those records in which the title is not the same as yours.

THE WITNESS: It would be on your list.

Q You would have to do it with these records.

A The record itself?

Q Yes.

MR. RICH: Can you just say what album number you are referring to?

THE COURT: Can't you tell from the jacket?

THE WITNESS: No, there is no title on the jacket.

MR. RICH: Your Honor, it might help us understand what titles are being referred to or if they are all her compositions if she can refer to either the Playtime or Carousel number that she is looking at.

THE COURT: It is unnecessary. They are all in Exhibit 11. These will be available.

MR. RICH: Because she said they are all hers.

THE COURT: She said they were all hers. Except

I am asking now where the titles are different.

MR. RICH: I see.

Q I am showing Mrs. Rosette a list of compositions just to refresh her recollection, compositions which are the subject of the lawsuit to help her in identifying them.

THE COURT: Yes.

A I haven't got the album here.

THE COURT: You don't need the album. Just answer this specific question: which of the titles that you see here were changed in what way from the titles that you had.

A Santa Clause Was Flying Through The Sky was changed by them to Flying Through The Sea.

THE COURT: What else?

MR. RICH: Your Honor, she said changed by them. I don't know who them is.

THE COURT: Nobody knows, it doesn't matter. We are all talking within the framework of 11 in evidence.

THE WITNESS: The Wee Wump was changed to Wee Wump.

Cowboys Old Horse was changed to Midnight Song. Rapunzel was misspelled. It was changed to an s instead of a z.

Ding Dong Bell was changed to Pussy In The Well.

Fiddle de Doo was changed to Fly and The Bumblebee.

I'm sorry, I believe that was my alternate title for an animal title. I'm sorry about that one.

I believe those were the only changes.

Q Mrs. Rosette, have you ever authorized the defendants to mechanically reproduce your compositions?

A No, I have not.

Q Have any of them ever paid you a royalty for a mechanical reproduction?

THE COURT: Who, Rainbo?

MR. COUTURE: The defendants, any of them.

THE COURT: Any of them?

MR. COUTURE: Yes, ever paid a royalty.

A Never.

Q Have you or has anyone on your behalf received a notice of intention to use from the defendants or any of them?

A No.

Q Have you ever received any correspondence from the defendants or any of them?

A I personally, no, I haven't.

MR. COUTURE: I have no further questions.

THE COURT: Did you ever make a demand for royalties or damages on the defendants?

THE WITNESS: Yes, the early stages of this suit.

MR. COUTURE: I was going to bring it out in Mr. Brown's testimony. Yes, we send a claim order to them. If you think it is appropriate, I will put it in evidence.

THE COURT: If you have a claim and a response put it in at this point; it will be easier.

(Plaintiff's Exhibit 14 marked for identification.)

MR. COUTURE: And 15 and 16.

(Plaintiff's Exhibits 15 and 16 marked for identification.)

Q After you had purchased the allegedly infringing phonograph records or acquired them, did a time come when anyone on your behalf communicated with the defendants?

I show you Plaintiff's Exhibit 1 .

A I think you did. And I believe Harry Fox did, too.

THE COURT: Did you instruct your lawyer to make a claim on Rainbo?

THE WITNESS: Yes, I did.

THE COURT: All right.

THE WITNESS: Yes, I gave them all of the infringing records and asked them to proceed.

THE COURT: The letters will speak for themselves. Just identify them.

Q Do you recognize Plaintiff's Exhibit 15?

A Yes, but I remember I questioned this because

he said we may reactivate the line through Ed Chalpin and I don't know why they had the right to use it themselves.

MR. RICH: Objection.

THE COURT: I don't want that. Strike it out.

Q Identify Plaintiff's Exhibit 16, please.

THE COURT: Is there any objection about the authenticity of the evidence?

MR. RICH: No.

THE COURT: Any objection on the grounds of relevancy?

MR. RICH: No.

THE COURT: All right, received in evidence.

(Plaintiffs' Exhibits 14, 15 and 16 received in evidence.)

THE COURT: Anything further?

MR. COUTURE: Plaintiff rests.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. RICH:

Q Mrs. Rosette, you testified that all the compositions contained on these records which had been marked collectively as Exhibit 11A.

THE COURT: 11. 11A is the single one. 11 are collectively your compositions.

A What?

Q You testified all the compositions contained on Exhibit 11, which is all these albums here, are your compositions.

A No, I didn't. I made a list of a number of mine contained therein.

Q I understood your testimony to be, Mrs. Rosette, that all the compositions contained on these records were your records?

A I misunderstood. That specifically is mine, the Alice In Wonderland album. On the others I made a list of all my numbers.

THE COURT: Where is that list?

THE WITNESS: You have it downstairs.

THE COURT: Have you got such a list?

MR. COUTURE: I don't have a list relating the particular composition to the particular album. There are only 33 compositions.

THE WITNESS: 57 uses.

MR. COUTURE: Some occur more than once.

THE COURT: Where the title is exactly the same as yours, Mrs. Rosette, did you list them to the record relating to that composition?

THE WITNESS: Yes.

THE COURT: Is it the fact that in all of those you testified these were your compositions?

THE WITNESS: Definitely and my productions of them.

THE COURT: Right. Then I asked you whether there were others where the title was different which you also recognized as your compositions?

THE WITNESS: No, no, no.

THE COURT: Didn't you just give us a list of titles that were different from your titles, but where you say they were still your compositions?

THE WITNESS: Yes, I said that, I recognized the changes in my own titles also, but I recognized my compositions.

THE COURT: So if we take the list you gave us with the change in title with your composition and add to that the compositions where the titles were not changed, you say those also were your compositions.

THE WITNESS: Yes.

THE COURT: That gives you all the compositions within Plaintiff's Exhibit 11 that was claimed by the plaintiff as coming under her authorship. Is that clear?

THE WITNESS: Yes, sir.

Q So that the record is clear then, I am going to show you Carousel Record number C806 called the Mother Goose Party.

A Yes.

Q And I show you the record which lists a good many compositions and ask you if the only compositions contained on this record that you claim in this lawsuit are Mother Goose Party and Wynk'N, Blynk'N And Nod?

A I believe so. It would help me to see the list, because many of these are conventional titles of which I have written but are not mine, but I have listed -- I gave you a definite list of my compositions contained in each album. It is much easier that way: haven't you such list?

MR. COUTURE: Yes, if I may.

THE COURT: All this should have been done at pre-trial by the way, but since there was such an old calendar here I don't know what happened to it.

MR. COUTURE: Is this what you are referring to?

THE WITNESS: Have you mine?

MR. COUTURE: No. That was the album also, wasn't it?

THE WITNESS: I am looking for it.

I have it. Would you like to take it by album?

Q Yes, please.

A In Carousel 812.

THE COURT: What is this you are telling us now?

THE WITNESS: My compositions in each album.

THE COURT: All right. Give me the first one.

THE WITNESS: Carousel 812. The title of the album is The Pied Piper and other singing stories.

THE COURT: Go ahead faster.

THE WITNESS: My first number is Santa Claus Is Flying Through the Skies. They made two changes, one on the label and one on the cover. One is Flying Through The Sky and one is Flying Through The Sea. They made two changes in that title.

THE COURT: Next.

THE WITNESS: The Pied Piper.

THE COURT: The next album.

THE WITNESS: I am giving you the contents of each album. There are many things in this album.

THE COURT: Don't give me all the contents. Just tell the album.

THE WITNESS: Just the title of the whole album.

THE COURT: Just the title of the album in which you find some of your compositions, at least one of your compositions, because you already testified that every title which is the same is your composition. You have been over that before. You have also given us a list of the title changes in your compositions, is that right?

THE WITNESS: Yes. Some albums, for instance, they used eight of my things and sometimes two or three.

MR. RICH: If that is made clear then I will withdraw that question.

THE COURT: Yes.

MR. RICH: All right.

MR. COUTURE: Your Honor, for clarity, is this clear now: what she testified is that each of these albums contains at least one composition which is an infringement.

THE COURT: Let me summarize the testimony as follows with you and see if you disagree with it and let me know. There are 13 record albums contained in Exhibit 11. Each of these albums contains a number of compositions?

THE WITNESS: That's right.

THE COURT: On each of these albums there is at least one composition that you were the author of?

THE WITNESS: Yes.

THE COURT: Therefore, there is no record within Exhibit 13 on which you do not claim at least 1 composition?

THE WITNESS: That's right.

THE COURT: In order to determine which are your compositions you listened to each of the 13 records; is that correct?

THE WITNESS: Yes.

THE COURT: You now testify and have so testified that where the title of the song in the album is the same as the title in your complaint that you swear that these are songs of which you are the author?

THE WITNESS: Yes.

THE COURT: You say that further than that there are others where the title has been changed, but where they are nevertheless songs of which you were the author?

THE WITNESS: That's right.

THE COURT: And in your testimony you have given us a list of those changed titles?

THE WITNESS: That's right.

THE COURT: All of which you claim authorship of?

THE WITNESS: That's right. In addition to that some of the titles appear in more than one album.

THE COURT: I understand.

THE WITNESS: In other words, there are 33 infringement involved but 57 uses of them.

THE COURT: Yes.

BY MR.RICH:

Q Mrs. Rosette, with regard to the titles -- not just your titles but all the titles contained in these including your titles -- these titles are in common usage in the record industry, aren't they?

A Yes.

Q In other words, a lot of companies use these exact same titles, but not necessarily with your arrangements of these compositions?

A That's right. Most of them use them in their original public domain form.

Q Yes. In other words, there would be a lot of record companies that would have the title Old King Cole?

A That's right.

Q But you wouldn't claim that to be an infringement, only if Old King Cole was your rendition, is that right?

A That's right. I believe there is a world of difference. My rendition would have a violin trio.

Q Is there any way of looking at the record label to see whether or not that recording is your recording?

A Certainly not, I would have to listen to it.

Q You would have to listen to it?

A Absolutely.

Q Mrs. Rosette, were you an officer and stockholder of Junior Records?

A I don't know technically whether I was. I mean, it was our company, is all I know.

Q In other words, you treated that as your husband's and your company?

A Yes.

Q The same answer for Lincoln Records?

A Yes.

Q And the same answer for Treasure?

A Yes.

Q I notice the name Wonderland Records.

A That was a label of Junior Records.

THE COURT: Is this a good stopping place?

MR. RICH: Yes.

THE COURT: All right. Let's adjourn to 2 o'clock. Try to be prompt.

(Luncheon recess)

AFTERNOON SESSION

2 P.M.

THE COURT: Please proceed.

M A R I O N R O S E T T E, resumed.

CROSS EXAMINATION CONTINUED

BY MR. RICH:

Q Mrs. Rosette, I call your attention to the composition Sleepy Time For Dolls, do you recall the first date on which this composition came out on phonograph records?

THE WITNESS: Which one is that?

MR. RICH: Sleepy Time For Dolls.

A That was some time between '49 and '51.

THE COURT: Wait a minute. Let's be very careful of what we are saying here.

What is the question?

MR. RICH: The question is, when a record containing that composition claimed by Mrs. Rosette was manufactured.

THE COURT: Then you have got to follow it up with sold?

MR. RICH: Yes. Manufactured -- well, I will ask the question.

Q Manufactured and sold.

A Well, manufactured wouldn't be the same as sold,

because we waited until we had a complete catalog. There was one common background that mentioned all the compositions.

THE COURT: When was the first time that you sold this record?

THE WITNESS: It might have been sold, I would say, between '49 and '51. I wouldn't know exactly.

MR. COUTURE: Excuse me, your Honor, this will be a memory test if Mrs. Rosette isn't permitted to refresh her recollection.

THE COURT: She should be permitted to refresh her recollection in any way possible.

MR. COUTURE: I have a list here prepared in an earlier litigation.

MR. RICH: May I see what it is, your Honor, that she is referring to?

THE COURT: Surely. As a matter of fact, if that's been verified in a matter of this kind I would allow it in as past recollection recorded. Her memory is obviously exhausted.

Who prepared this list, Mrs. Rosette? Did you?

MR. COUTURE: I can explain.

THE COURT: I wish you would, yes.

MR. COUTURE: I was the attorney. I prepared this from Mrs. Rosette's notes to me giving me the dates of

her own records as to when record sessions were held for the particular labels, particular compositions.

THE COURT: Let me see it.

This shows the date of mechanical reproduction. Does it show the date of sale here?

MR. COUTURE: No.

MR. RICH: Can I get into that, your Honor? I don't know if Mr. Couture knows it or not. If I can see that perhaps I might be able to assist in some way.

THE COURT: Well, you can look at it.

MR. RICH: Thank you.

THE COURT: Just that page?

MR. COUTURE: I would expect that further questions will require the reference to other portions of that. What that is is answers to interrogatories.

MR. RICH: Can I look at this?

MR. COUTURE: Certainly.

MR. RICH: These are answers in the federal lawsuit of Marion Rosette against Crown.

Do you have the questions to which this refers?

MR. COUTURE: No. I have it along only for the purpose of the list, to give dates from Mrs. Rosette's recollection.

MR. RICH: I think I may have it.

Q I note, Mrs. Rosette, that this seems to be a conformed copy, but I have here a Xerox copy bearing what I think you just showed me, a Xerox copy of the federal court file which appears to bear your signature. Is this your signature?

A Yes, it is my signature.

MR. RICH: Your Honor, since these are dates and I won't presume that Mrs. Rosette would know the dates offhand by memory, I ask that this be marked as a defendants' exhibit.

THE WITNESS: The dates of which?

MR. RICH: The dates I just asked you about. I asked you about dates that records were manufactured.

THE COURT: Were made what? I didn't hear you.

MR. RICH: I would like to first mark this for identification.

THE COURT: All right.

xx (Defendants' Exhibit A marked for identification.)

THE WITNESS: When you say manufactured, you mean pressed?

THE COURT: I don't know why this can't be done in chart form. You take each composition and show when it is alleged to have been composed, you show when it was first manufactured, you show when it was first sold, you show when

the statutory copyright was granted, you show when the notice of first use was filed, you show when the defendant filed his notice of use, if any, and across the board you then get each title of what the life history has been.

MR. RICH: I have done that, your Honor, in my own notes. That is what I was referring to earlier.

THE COURT: I want to save court time here. This is no way to try a case by asking the witness about every title.

MR. RICH: I don't intend to, your Honor. If I may I will get on with it.

MR. COURTURE: Continuing the point, your Honor, if we get all of it in, the evidence is in the plaintiff's case, in the briefs we can give you such a chart and argue from there.

THE COURT: I may want to decide this from the bench, I don't know. You have got an issue here of great legal -- I won't say complexity, but difficult -- and that is where you publish or dedicate a phonograph record before you have a statutory copyright, is that a dedication to the public use so you cannot thereafter claim a statutory copyright. Is that correct?

MR. RICH: Yes, your Honor.

MR. COUTURE: We have a fact issue probably as to 24 of the 33 compositions.

THE COURT: As to when, whether there was publication?

MR. COUTURE: Yes. It is our position that on 24, the ones with the earlier copyright dates, the ones with 49, 50, 51, the copyright registration was completed before the release of the record to the public, so the issue doesn't exist in those.

THE COURT: Correct.

MR. COUTURE: It is our position with the other nine which were not copyrighted until 1963 or '64 there is no question there was an earlier release.

THE COURT: Then you also have a question as to the date of the first filing of notice of use in order to determine subsequent infringements at least under the statutory compulsory licenses provision of the statute, is that agreed?

MR. COUTURE: Yes.

MR. RICH: Yes.

THE COURT: Let's proceed on that basis. Then we have a narrower issue.

Q Mrs. Rosette, I now show you a document which is interrogatories in the same federal action of Marion Rosette against Crown Record Company, Inc. to which I believe Defendants' Exhibit A-1 for identification was in

response. And I ask you or if your counsel would agree this is a set of interrogatories to which response was given.

MR. COUTURE: I have no way of knowing since I don't have the file with me.

THE COURT: I will look at it and tell you in a minute or two.

MR. RICH: I can represent to the Court that I inspected the original record at the federal warehouse near the Hudson River and this is what I found and I had the federal warehouse copy these for me.

THE COURT: It is obvious that they are saying that -- you have got to mark this.

Make the demand A-1 for identification.

(Defendants' Exhibit A-1 marked for identification.)

xx

THE COURT: If you look at the dates, Mr. Courture, you will see it was obvious, one was filed July 15th, the demand, and the answer was August of the same year. And also I compared the paragraph which states the question and compared it with the other. There is no question.

MR. COUTURE: I was not going to object on the authenticity ground. I was going to do what you did, just compare the answer with the question.

THE COURT: What you can do is put in evidence both papers and reserve the right on relevancy. I will let you reserve the right on relevancy to strike out any portions of what is obviously an admission by the plaintiff on the ground that it is not relevant to this particular case.

Is that agreeable?

MR. COUTURE: That is fine.

THE COURT: Mark those in evidence subject to that.

(Defendants' Exhibits A and A-1 received in evidence.)

xx

THE COURT: I want to make it clear that the objections to relevancy must be made at the conclusion of the case and not later.

Q Mrs. Rosette, I call your attention to the demand for interrogatories or notice of interrogatories, paragraph 1C, which says "State whether to plaintiff's knowledge any mechanical reproduction of any of said compositions were made, distributed and vended. If so, set forth the first date of each said mechanical reproduction and vending thereof and the person or corporation who mechanically reproduced the same or vended or otherwise distributed the same and the place or places where the same were

mechanically reproduced and the place or places where the same were vended or otherwise distributed."

Now, in response to that question or interrogatory which asked for your knowledge as to mechanical reproduction, distribution and vending I refer you to pages 2 to 4 of the answers to interrogatories, Defendants' Exhibit A, which sets forth various dates.

A Yes.

Q You see?

A Yes.

Q These dates, I assume, were in response to the question that asked for dates of mechanical reproduction, distribution and vending; is that correct?

A Well, the question isn't right, it reads mechanical production can be to any firm when I give it to a pressing plant. These are the dates of recording sessions. You are allowed to record only four numbers at a session and sometimes there were longer intervals, depending on whether some members were ill, we have a large orchestra and large cast orchestrations. If you only do it at one session and anything that had to be done over again, these were the dates of the recording sessions, so when they were run together that was the date they were probably mechanically pressed.

Q The interrogatory referred to asked about dates as to mechanical reproduction, distribution and vending and then it says if it was such mechanical reproduction, distribution and vending set forth the first date of each said mechanical reproduction and vending thereof.

A I couldn't give it for each because it came out with every catalog.

THE COURT: Was there any answer as to vending on that?

MR. RICH: The answer, your Honor, "authorized mechanical reproduction of plaintiff's subject musical compositions were first made, distributed and vended by Lincoln Records and Junior Records. All said mechanical reproductions were made in New York, New York, and vended and distributed throughout the United States."

Then it says "The date of the first mechanical reproduction," and then it gives dates and the name of the record company.

THE COURT: If you don't expect to establish any variance between the answer and what you believe the true facts to be, it speaks for itself, doesn't it?

MR. RICH: Yes, your Honor.

THE COURT: So unless you wish to change

something, there isn't any point to cross-examine. I will leave it to you. I don't know what you have in mind.

In other words, if there is any omission there, you certainly can question about it.

MR. RICH: I intend to, your Honor.

Q Mrs. Rosette, do you know when the composition The Monkey Who Wanted to Fly was first sold on phonograph records?

A When it was first sold?

THE COURT: If that appears on there, I will treat it as past recollection recorded.

MR. RICH: No.

MR. COUTURE: It doesn't, but Mrs. Rosette may find it useful.

THE COURT: She can keep that, yes.

MR. COUTURE: Please.

(Handing)

THE COURT: You may refer to that, Mrs. Rosette, whenever you want.

MR. RICH: I don't believe that is on it.

MR. COUTURE: No, it isn't.

THE COURT: What's the name?

MR. RICH: The Monkey Who Wanted to Fly.

THE WITNESS: George could have told you, I couldn't.

THE COURT: What did you ask?

Q When was it last released and sold?

A It was part of a full catalog. They probably advertised first and sent to distributors or maybe magazines and then put on sale.

Q Do you recall when?

A As I said, I think some time between 1949 and '51.

Q Could you be more definite than that?

A No.

Q Let me ask you this: what records do you have --

MR. COUTURE: Your Honor, may you direct the counsel to let Mrs. Rosette finish the answer?

THE COURT: Yes.

A We put them out in different lots and colors. First they were only singles and 78's a whole lot of them. Then we made 45's. We never went into LP's until Junior Records -- until first Treasure Records, I'm sorry.

Q So they appeared on Junior Records and they appeared on Lincoln Records?

A Yes.

Q And they appeared on Treasure Records?

A That's right.

Q What business records do you have that would show the dates of first release of these recordings?

A First release?

Q Yes, when they were first released to the public.

A It would be hard to say because they were sold to distributors, who then sold them, so it would be awfully hard to say.

Q What records do you have to show when they were first sold to distributors?

A Well, I have lots of sale sheets.

Q Do you have them with you today?

A I think I gave you some. Do you have them?

MR. COUTURE: I don't have any.

THE WITNESS: Maybe I have them with me. Shall I see?

Q Could you check please?

A Those would be late, would be our current companies. I have ones of Wonderland from some distributor dated late in 1951.

Q What business records would they be, the purchase orders by distributors or shipping orders to distributors?

A Oh, I doubt if they would exist at this late date, shipping orders of the Lincoln Company or even Junior or Treasure. Why would I have business records? I have the dates of the incorporations of the successor companies.

Q When was Junior Records incorporated?

A I forgot the exact date. I have it some place.

THE COURT: What was the question, the date of which incorporation?

MR. RICH: Junior Records.

THE WITNESS: I believe it was late in '51, I believe. My husband remained an officer of Lincoln Records.

Q When was Lincoln Records incorporated?

A I believe '49. Well, it might have been '51. It was within a short time of each other.

Q Do you have any records to show when it was incorporated?

A Yes, I have the exact corporation dates at home.

Q With regard to the seven-inch records, the single records, how many compositions would there be on each side of the record at the time that you first -- you, meaning Lincoln or any of the other record companies -- first released them?

A Well, there would be one on each side except in the case of a long composition, possibly Gilbert and Sullivan or fairy tales like Snow White or Alice In Wonderland which took up both sides. The others were single sides.

Q So if you recorded four compositions at one recording session, those four compositions would suffice

for four sides or two seven-inch records, is that correct?

A That's right.

THE COURT: Is that 78's you're talking about?

MR. RICH: Yes, the old 78's.

Q So that you were able or Lincoln was able to release records containing these compositions that were recorded within days after the recording sessions, isn't that correct?

A They would have been able but they didn't. They weren't released singly ever.

Q They would have been able?

A Yes.

Q And all of the compositions which are the subject of this lawsuit were originally contained on seven-inch records, is that correct?

THE COURT: On what?

MR. RICH: Contained on the seven-inch records.

A Yes.

THE COURT: Defendants' records.

MR. RICH: No, were contained on seven-inch records.

THE COURT: Seven-inch?

MR. RICH: Yes, those are the 78's.

Q Is that correct?

A Either 78 or 45. There were 45 in the Wonderland

line.

THE COURT: Are we dealing with anything but seven-inch records here?

THE WITNESS: No.

THE COURT: I didn't think so. Why can't you limit it to 78's and 45's, it would be easier.

MR. RICH: I didn't realize it, your Honor.

THE COURT: All right. Because that is what threw me.

THE WITNESS: These were later compiled into LP's.

THE COURT: Yes, but the original recording sessions would be used on 78's, is that right?

THE WITNESS: That's right, yes.

Q Before Junior Records or Lincoln Records or Treasure Records began to sell the records to the public or distributors there were quantities of these records that you had pressed, is that correct?

A Yes.

Q Did these companies have more records pressed than they had orders for at the time of the pressing orders?

THE COURT: More records pressed than what?

MR. RICH: Then they had orders for.

THE COURT: Did they create an inventory?

MR. RICH: Yes.

A I am sure we must have.

Q Do you know whether any Junior Records or Lincoln Records or Treasure Records are still sold around in the stores in the United States?

A I am quite sure there aren't.

Q Have you checked?

A I know they weren't. They were my own company.

Q That is not what I am asking. Is it possible if I went into a store like Sam Goody's today that I might still find one of the old Junior Records?

A Oh, I am sure you wouldn't.

Q Mrs. Rosette, in answer to a question on direct examination you told your husband that the Carousel and Playtime labels never requested or filed a notice with you that it was going to be recorded?

A That's right.

Q Is that correct?

A Yes.

Q Isn't it correct that these record labels, Carousel and Playtime, didn't have to file any notices with you?

MR. COUTURE: I can't, your Honor.

A It is certainly not correct.

THE COURT: That is a legal conclusion. I don't understand the question.

MR. RICH: Well, if I may.

Q There came a time, Mrs. Rosette, when you granted to Whitehall Mercantile Corporation and its assigns the irrevocable right to use the musical compositions which are the subject of this lawsuit, is that correct?

A That's right.

THE COURT: What company was that?

MR. RICH: Whitehall Mercantile Corp.

THE WITNESS: The factors.

THE COURT: When you say you, who is you?

MR. RICH: Mrs. Rosette, as an individual.

THE COURT: Let me see that. Mark it for identification.

xx (Defenndants' Exhibit B marked for identification.)

THE WITNESS: Wasn't that word "for its assigns"?

THE COURT: Do you intend to bring in the schedule because otherwise it is an incomplete document?

MR. RICH: I think I can tie it, your Honor.

MR. COUTURE: Your Honor, before we go further I think counsel is leading us into the affirmative defenses the amendment to which were denied. This leads us into the whole question of the pledging and that's what is related here.

THE COURT: I agree with you. The only thing is

there is no indication of what the annexed list is.

MR. RICH: I am going to get into it.

THE COURT: How?

MR. RICH: I have another list and other documents, yes. If I may just comment on what Mr. Courture just said, we raise certain things by way of affirmative defenses. First I submit that we didn't have to raise this situation with Whitehall Mercantile and with Mr. Taback which has been part of this case. Mr. Taback's name had come up often enough and Mr. Taback died some time around 1964. Mr. Taback was the one with the Carousel and the Playtime label. He died in around 1964, your Honor.

I submit that we have the opportunity to show that Mr. Taback, for whom defendant in this action Rainbo Records had rights to the composition and I think we have right to show just by way of a general denial which said that plaintiff claimed we infringed and by generally denying that allegation I think we have put into issue the fact that we had a right to press these without any obligation at all to Mrs. Rosette as a copyright owner. This didn't have to be raised by an affirmative defense, your Honor, and just by a general denial.

Also the answer that was originally served had alleged that these songs were in public use. Now, if

these tapes could be used by anyone deriving title back from Whitehall, which obtained it from Mrs. Rosette, this in my way of thinking would also be a published use which we are prepared to show.

I further would point out that one of the problems that we have here, and had possibly all the way through this case was because -- and I think this is one of the reasons why statutes of limitations are put into effect -- is that Mr. Taback had died, as I said, some time around 1964. It has not come to light until very, very recently, a copy of the agreement under which Mr. Taback had received the rights to these tapes that Mrs. Rosette gave to Whitehall. You see, the chain was that Mrs. Rosette gave them to Whitehall, Whitehall gave them to Mr. Eichler, Mr. Eichler gave them to Mr. Taback. And they all derived and evolved in this document here, a document that Mr. Courture gave to Mrs. Rosette that had been marked as Defendants' Exhibit 1 and 1-A are documents right in that other lawsuit.

In those documents reference is made and admissions made that these were given away. But my point is this, your Honor: we didn't have to raise these by affirmative defenses, just a general denial to their allegation that we were infringing was sufficient to put it in issue.

And for these reasons and the fact that Mr. Courture

also opened the door by asking whether or not the defendants filed any notices of use permitting us to go in because the original agreement between Mrs. Rosette and Whitehall said there didn't have to be any filing of any notices of use at all.

THE WITNESS: That is not true.

MR. RICH: Well, the agreement speaks for itself.

THE WITNESS: May I --

THE COURT: The agreement says nothing because the list annexed is not there and doesn't mean anything.

MR. RICH: I intend to get into it.

THE COURT: Have you got the annexed list?

MR. RICH: Yes.

THE COURT: Let me see it.

MR. RICH: There are other documents which refer to it which have the list and I am going to go through that with Mrs. Rosette.

THE COURT: I hold this is not a complete document because where you have a document which deals with a dispositive matter of assignment of license you must show what the subject matter is.

MR. RICH: Your Honor, I already asked Mrs. Rosette earlier when I first showed her this if these are the musical compositions involved in this lawsuit. She

said yes.

THE WITNESS: That is not a complete picture.

MR. RICH: I didn't ask about a picture, I just asked about the composition. She already admitted it was.

MR. COUTURE: My objection a moment ago included the request that you strike the question and answer that preceded it.

THE COURT: I am working on two different assumptions here, one is in relation to your motion in connection with the necessity of its being an affirmative defense, but preliminary to that whether this is also a completed document that is meaningful. And to me it is incomplete.

MR. RICH: If I may, your Honor, I can go on with that and show it is complete.

MR. COUTURE: The original answer doesn't speak of public use. It says that the compositions are in the public domain, a term of art that had nothing to do with the existence of the mechanical licenses.

THE COURT: I think that's right. I think public domain means public domain, it doesn't mean title or something else.

MR. COUTURE: Secondly, that a general denial would cover what happens to be pleaded as an affirmative defense.

I don't think it is true, since the issue raised is one of competitive title, competitive in the sense that it would cut into the exclusivity of Mrs. Rosette's rights.

THE COURT: That is what I ruled before. I thought I could make a preliminary ruling without having to hit that issue at this time on the very central ground that what is being offered is not a complete document.

THE WITNESS: May I say something, please?

THE COURT: No.

MR. RICH: If I may, your Honor, I am going to get back to that in a second. I am going to get back to that in a second to show it is complete. The plaintiff already said these are the songs referred to in the lawsuit, the ones referred to in that document and I expect to show it in several other different ways.

Q I show you a letter, Mrs. Rosette, dated February 27, 1953, which appears to be from George Rosette, Junior Records, to Audio Matrix.

THE COURT: Mark it for identification.

xx (Defendants' Exhibit C marked for identification.)

Q I show you this letter, Mrs. Rosette, and I ask you if this is a true copy of a letter written by your husband to Audio Matrix on that date.

A I recognize the signature. That was only half of the

pledge.

THE COURT: Nothing has been offered yet.

MR. COUTURE: I would like to note a continuing objection.

THE COURT: You don't have to do it.

MR. RICH: I ask that this be marked for identification.

xx (Defendants' Exhibit D marked for identification.)

Q This was a letter received by Junior Records at or about the time it was written, Exhibit D for identification, is that correct, Mrs. Rosette?

A Yes, that is part of the pledge, but it is only half of it.

MR. RICH: I would like this marked as Exhibit E for identification.

xx (Defendants' Exhibit E marked for identification.)

Q And this letter marked as Exhibit E was received by Junior Records from Belton on or about the date that it was written, is that correct?

A Yes.

Q Now, Mrs. Rosette, on April 21, 1955, Whitehall Mercantile Corporation sold the tapes which you had given the rights to under the November 1, 1953, agreement, sold those to Aaron Eichler.

A That's right.

Q And I show you this agreement that I believe you have seen before and ask --

THE COURT: Mark it for identification.

xx (Defendants' Exhibit F marked for identification.)

Q Mrs. Rosette, I just started to ask you before, this is the agreement under which Whitehall transferred property to Aaron Eichler under this agreement of April 21, 1955?

A Yes.

Are you familiar with the letter mentioned there?

MR. COUTURE: I object, your Honor.

Q Yes, but I will get into that in a moment.

MR. COUTURE: How could she possibly answer that?

THE COURT: Which question?

(Read)

THE COURT: I will sustain the objection to the question. The document speaks for itself.

A It is governed by the letter that is mentioned, by the terms of the letter.

Q The terms of the letter -- that would be paragraph 1D -- and the letter that it is referring to is what we previously marked as Defendants' Exhibit B for identification, the November 10, 1953, letter. Isn't that correct?

MR. COUTURE: Counsel is persuading her that these papers mean something and she answers yes because it makes sense. She is not testifying under oath that these things mean this or that.

THE COURT: Technically you should not lead.

MR. COUTURE: It is not only that. These are things she has never seen before. She is not privy to that, Eichler or Whitehall.

MR. RICH: She was privy to it, your Honor, in another lawsuit and Mrs. Rosette was sure this is what it purported to be.

MR. COUTURE: She didn't. Even at this point counsel is taking advantage. He is showing her papers and saying they mean this, don't they. Mrs. Rosette is saying yes, and she's never seen these papers before although he says she saw them on the previous lawsuit. I am not sure of that, I don't know. First of all I don't know what the papers are from the time to time.

THE COURT: The answer is meaningless unless the document is admitted on the basis of the answer.

MR. COUTURE: Except even if the documents are admitted these questions are improper.

Q Mrs. Rosette, you said that paragraph 1D referred to a certain letter and that this April 21, 1955, agreement

was meaningless--

THE COURT: You can't examine from a document not in evidence. I am not going to let you do it. You can ask about establishing the authenticity of a document, but I am not going to allow any questions concerning what a document means or anything like it.

MR. RICH: I am not.

THE COURT: That is what you are doing, aren't you?

MR. RICH: No, the witness just said you can't look at the letter of April 21, 1955, without reference to the letter mentioned in it. And I then pointed to paragraph --

THE COURT: Point to me not the witness.

MR. RICH: Sorry. Which said a certain letter dated November 10, 1953, and I asked her if that is the letter marked Exhibit B.

THE COURT: If she knows.

MR. COUTURE: She is not competent.

THE WITNESS: I know details had to be governed by the terms of my letter which provided for quarterly statements and royalty payments. There was no other consideration for my releasing, for my honoring that pledge.

MR. COUTURE: She is not competent to answer that question. She is not a lawyer, she isn't privy to the

agreement.

THE COURT: He is only asking her if there is a similarity of date, in other words, the internal evidence on defendants' exhibits for identification --

MR. COUTURE: Which I haven't seen. I wish you would be shown.

THE COURT: Defendants' exhibit refers to a letter of April 10, '53, and he is asking her whether Defendants' Exhibit B for identification is not the same letter referred to.

I think it is improper because it is not in evidence.

MR. COUTURE: Not only that, even if it is exactly the same date she can say yes, it is November 10, 1953, in both cases, but she can't say this document to which she was not a party --

THE COURT: She can tell us. She seems to know something about it.

MR. COUTURE: But the manner in which questions are asked is inclining her to give answers.

THE COURT: It is improper because he is asking about the contents of documents not in evidence.

MR. RICH: Your Honor, may I continue along this line, subject, of course, to these being marked in evidence.

THE COURT: I am going to allow you to develop your record and if, as I am now inclined to do I am going to conclude all this you will have a good offer of proof in the event the decision is adverse to you and you take an appeal. That is all I am doing now. On the other hand, within that limit I am not going to allow you generally speaking, if there is a proper objection, to ask improper questions.

MR. RICH: Thank you, your Honor.

THE COURT: I have ruled at the beginning I think it is unfair to try to set up an opposing title without adequate notice to the plaintiff in a case which started in 1966. I adhere to that.

You now argue with me that you don't have to do it under the affirmative defense, but that you can do it under the general issue. I am inclined to rule, I am letting you make your record, that that is not correct and that it is the kind of defense that would have to be made under the affirmative defense rule of Rule 8C which deals with affirmative defenses, Federal Rules of Civil Procedure.

MR. RICH: Your Honor, so that I don't give you any misconception, we are not saying that there was any opposing or opposite rights to these tapes. There is no

question that Mrs. Rosette owns certain tapes. Those tapes have been used by Junior Records or one of the other record companies. These are other tapes which are duplicate tapes that was given by Mrs. Rosette to others in a foreclosure proceeding. That is what I am getting at.

THE COURT: Tapes have nothing to do nor does performing rights have anything to do with it. The question is are the statutory copyright rights that a copyright owner has either by original application or by assignment to what is concededly a derivative work, assuming originality? That is what you have here.

MR. RICH: We are not saying, your Honor -- and this hasn't been raised -- that royalties might not be due to the plaintiff. That is some issue that is not before the Court. What we are talking about now is the liability of a presser for pressing certain records.

THE COURT: It is a separate question.

MR. RICH: If I may, your Honor, if the presser was pressing records for Mrs. Rosette, let us say, he is perfectly entitled to do so. She owns the tapes and the masters and mothers and stampers and even the copyright.

Now, let's assume for a minute that Mrs. Rosette didn't own the copyright, but all she owned was and had full proper title to the masters, mothers, and stampers from

the copyright owner and went to the presser and said "Would you press up some records for me" and the presser did, there couldn't be any liability for copyright infringement because the owner --

THE COURT: What are you arguing about? The only question is whether you are too late and it is prejudicing her now? You brought this in at the last minute after six years of litigation. I am not saying it is not relevant. just prejudicial.

MR. COUTURE: It may be the question of a general defense on the issues not pertinent. Because we are bound by the pre-trial order and the statement therein by both parties of the issues and --

THE COURT: Well, the issues are broadly framed, you can't rely on that.

MR. COUTURE: But the complaint and answer are deemed amended to the extent those issues extend beyond them or narrow them.

THE COURT: No, I am ruling that the setting up of a title as against the copyright of the plaintiff is that kind of -- let me use the language of Rule 8C -- is that kind of matter which constitutes an avoidance of an affirmative defense and hence has to be pleaded.

As I said before, I am not going to repeat myself

too much, I would generally allow amendments where the rule provides for that, but in a six-year old case where there has been a pre-trial order, of course, I can construe it when it says wasn't the defendant liable for infringement of the plaintiff's composition registered for copyright as charged in the complaint. It could embrace the whole world, but I must look to the pleadings and the basis for the original pleadings the only defense is, namely, the matter is within the public domain and that for that reason the copyright was invalid, the presumption coming from that being, or the assumption, I should say, rather, that there was a prior publication or some other defects in the creation of the statutory copyright, but not once having assumed to get a good copyright there was any divestment there. That is the way I read it.

MR. RICH: We are not claiming that.

THE COURT: You are claiming divestment by virtue of a subsequent assignment and then by various mean assignments to a purported either assignee or licensee who in turn had the right to permit the defendant to press them and the defendant who equally had the right to press them.

MR. RICH: Not in divestment of the copyright.

THE COURT: I don't say it has to be a complete

divestment of the copyrights. It is setting up a right in opposition to the rights claimed by the plaintiff. Now, you can show, and I so ruled, that even though I denied your defenses with respect to publication, for example, you can still prove that, it seems to me, on the general issue by denying the validity of the copyright. But I will not allow material subsequent to the copyright, but only material prior to copyright. And that is the distinction I make only, mind you, on the grounds of prejudice to the plaintiff and not on the ground of relevancy. Now you have a perfect record. That is my ruling.

MR. RICH: Your Honor, I also would submit at this point, just in the event I overlook it later on, to add, if it hasn't been put in, though it perhaps was -- I am not quite sure -- the defense of laches at this point and it all comes in together if I may explain.

THE COURT: Where is there a defense of laches?

MR. RICH: Up to this point we didn't know certain things. Mrs. Rosette said she began to find these albums in 1962.

MR. COUTURE: She didn't say that.

THE COURT: Let him talk.

MR. RICH: If that is not so I am prepared to go through the testimony and have her say it. I marked it. She

says she acquired the albums with the Playtime and Carousel labels between 1962 and 1964 and then she changed that and added and perhaps in 1965. Am I right, your Honor?

THE COURT: Yes.

MR. RICH: Excuse me for just one second, Mr. Couture. One of the problems here was that there was only one person who had the facts, a witness. His name came up in the depositions, his name is up in the interrogatories in this case. His name is Sidney Taback. Mr. Taback passed around some time in around 1964. There was no way that anybody was going to find out about these things that are involved here, about Mr. Taback acquiring rights going back to Mr. Eichler and so on.

THE COURT: Why didn't the previous lawyer find out the way you did?

MR. RICH: No, your Honor.

THE COURT: Why not?

MR. RICH: It went further than that. For example, it was only in researching for another matter I came across a case called Rosette v. Crown Records and I saw the name--

THE COURT: Everybody knows that case, it is in this district.

MR. RICH: I didn't.

THE COURT: You didn't and the other lawyer didn't.

MR. RICH: I didn't.

THE COURT: Whose fault is that?

MR. RICH: I am going on, your Honor. I say through that I went searching on and wound up with something that led me to Mr. Eichler's attorney. Mr. Eicherl no longer lives in the United States and hasn't for a while, led me on to his lawyer and I got many, many documents that are involved here. There was tremendous prejudice --

THE COURT: Just tell me what there was that you found then that could not have been found out let's say 1969, 1970? What?

MR. RICH: Whether or not Mr. Taback acquired any rights in these compositions.

THE COURT: But he died before.

MR. RICH: That's right.

THE COURT: The man was dead.

MR. RICH: That's right, the man had died in 1964. Nobody knew how Tabak obtained these, rightfully or wrongfully, or however he may have received it.

THE COURT: Try to find out.

MR. RICH: As I understand it, when we were retained there had been great attempts to find it and it was unsuccessful. Perhaps I am a better detective or luckier detective than other people who had the case before me.

THE COURT: I will say you are a late detective anyhow. I know when you get in a case that you feel may have been messed up by somebody else. I have been in that position. As the court I have to be careful I don't prejudice the plaintiff. How can they run around now and rebut documents when there was no notice of it?

MR. RICH: Your Honor, I ran into this, too: after pre-trial discovery, the same matter I was called down before Judge Pollack before, after the matter was over and done with the plaintiff began to add on a completely new cause of action and Judge Pollack said "Well, I will take it in as a new cause of action, but I will permit Mr. Rich to have great and wide latitude with regard to cross-examination.

THE COURT: Each case is different. I did allow you on the statute of limitations, I did allow you on some other things here, but I will not allow setting up -- there is no use pursuing it -- a separate title.

MR. RICH: Let plaintiff say there was something that occurred after these things, anything. If she says anything occurred after these dates then I could understand and I would say fine.

THE COURT: But she hasn't had a chance to check it. How could she give you a glib answer?

MR. COUTURE: It is unfair to make a record, because

it will be a record and if it is decided that perhaps there should have been an adjournment instead of --

THE COURT: He is entitled to that. I don't care if I get reversed if I am wrong.

MR. COUTURE: You may be reversed on the question of not having permitted him to amend and give him an adjournment and I will be sitting here unable to respond to this evidence now.

THE COURT: Well, if I should decide in your favor and there is an appeal and it is reversed on this ground you will have plenty of time to check into this matter of the chain of title through Whitehall. To me it is not a collateral matter effect, but it is a wholly separate matter in terms of proof. You are dealing here with a pledge, a foreclosure, a forfeiture, liquidations, chains of title. I can't go into all that.

MR. RICH: I will show you in just a moment that we don't have to go into all that.

THE COURT: Don't show me any more. You have made the record. Go to something else.

MR. RICH: Let me just ask this, your Honor.

Q With regard to Schedule A attached to the April 21, 1955, agreement between Whitehall and Eichler, it refers to item 1, 27 reels of magnetic tape on which are

recorded 96 songs purporting to be in the existing catalog of Junior Records, Inc. My question to you is, that at that time in April, 1955, the 96 songs of Junior Records are those compositions the subject of this lawsuit?

THE COURT: I am not going to allow that. That is the same thing that I excluded. That is the whole point.

Q On April 21, 1953 --

THE COURT: Go to something else.

MR. RICH: Can I just ask this not referring to a document?

THE COURT: No, referring to your defense, you have enough of a record here in the event you want to go up on it in the event there is an adverse decision.

Q Do you recall the lawsuit, Mrs. Rosette, entitled Eichler Record Corporation v. Junior Records, Marion Rosette, George A. Rosette, Lincoln Records and Treasure Records, Inc.?

A Yes, I do.

Q Do you remember that lawsuit was settled some time the end of December, 1960?

A Yes, I do.

Q Were you represented in that case by Frank L. Ippolito?

A Yes, I was.

Q And Mr. Louis Forman represented Eichler Record

Corporations?

A Yes.

Q Do you recall there was a settlement agreement in that lawsuit in open court before Justice Saul S. Streit?

A Yes.

THE COURT: What is the relevance of this?

MR. RICH: The relevance is, your Honor, that as part of that settlement Mrs. Rosette agreed that Eichler could use these tapes which were pledged to the Whitehall Mercantile Corporation for any purpose, to assignment, to sell them --

THE COURT: What year is that settlement?

MR. RICH: December 14, 1960, your Honor.

THE COURT: All right.

MR. RICH: I would like to have this settlement agreement marked for identification.

THE COURT: Mark it for identification. I will make the same ruling on it, but you may make your record.

MR. COUTURE: We are in the affirmative defense, your Honor.

THE COURT: Yes.

(Defendants' Exhibit G marked for identification.)

THE COURT: Actually the multiplicity of exhibits introduced on this point shows why my ruling is correct,

that there is prejudice by virtue of surprise.

MR. RICH: Your Honor, I am just willing to stand on the fact that the documents will speak for themselves and I will ask Mrs. Rosette if anything happened after these.

THE WITNESS: Why don't you talk about the letters--

THE COURT: Don't say anything. Just answer questions. You are a witness here.

Is there any significance to the statement in there that royalties wouldhave to be paid to the plaintiff under that settlement?

MR. RICH: No question, even under the Whitehall agreement royalties were due. As I understand it, and Mrs. Rosette is nodding, that was the complaint against Eichler. Eichler brought on a lawsuit claiming breach of an agreement and conspiracy claiming that under the original Whitehall agreement of November 10, 1963, that Mrs. Rosette had said that she would not license any other person or corporation to use musical compositions shown in the schedule to the manufacture and sale of sound records and "That I represent the only person heretofore licensed was Junior Records." I believe Eichler than claimed that other record companies were licensed by her, and he claimed that there had been a breach.

On the other hand, Mrs. Rosette had then claimed against Eichler saying that Eichler didn't pay the royalties due and owing to her under this November 10, 1953, agreement. All their claims against one another were then resolved under this stipulation of settlement in this particular lawsuit in which it was agreed that Eichler had complete use of those tapes for all purposes, he could sell it, he could assign it. However, it was subject to the payment of royalties by whoever had acquired these tapes and mothers and stampers and so on, whoever was going to put them out on phonograph records.

THE COURT: When did that right cease to exist?

THE WITNESS: It never --

MR. RICH: I don't know it ever ceased.

THE COURT: Do you concede the defendant if he were not a presser would have to --

MR. RICHER: Whoever was the owner of these tapes, whcever put them out on phonograph records, manufactured and sold them, according to this I would say would get a royalty.

THE COURT: It all gets down to a simple contention that a presser of records is not a joint tort feasor, if you want to call it that, a joint infringer and that therefore even though the person for whom he presses the record would

be liable in royalties to Mrs. Rosette, he, the presser, is not.

MR. RICH: That's right, because the one who acquired these tapes and had the right from Mrs. Rosette -- through Mrs. Rosette I should say to put out records would -- her royalties and we as a presser wouldn't be obligated. If she has a claim, she would have a claim for royalties against whoever the manufacturer was.

THE COURT: You also claim, do you not, that a presser in any event is not a person subject to payment of royalties.

MR. RICH: That is absolutely correct.

THE COURT: You have your second defense.

MR. RICH: That's right. What I am showing her and I think this is raised by the denial that we just aren't obligated as an infringer.

THE COURT: I ruled against you on that.

Q Mrs. Rosette, I show you a record jacket --

MR. RICH: First let me have this marked for identification.

xx (Defendants' Exhibit H marked for identification.)

THE COURT: What is G?

MR. RICH: The December, 1960, settlement agreement before Justice Streit.

MR. COUTURE: The stipulation.

(Recess)

BY MR. RICH:

Q I show you this record jacket with the title Brave Little Sambo and the Weez Wump. This is a record jacket of Junior Records.

Do you know when this record was released and sold to the public?

A That was some time after 1951, after Junior Records was incorporated. That was the label. Wonderland was the label.

Q When did Wonderland become the label?

THE COURT: I just want to caution you. Don't guess if you don't know. There is no disgrace if you say you don't know.

Do you really know when that was actually first released?

A After the date of the incorporation, and I have the exact date at home of the incorporation of Junior Records.

Q Can you give me an approximate date to the best of your recollection?

THE COURT: Again without guessing.

I asked you how long the Junior -- we didn't ask you. We will ask you now. How long did Junior Records

continue to put out records on their label?

THE WITNESS: I imagine three or four years.

THE COURT: You have got to be very, very careful. Do you know when within that three or four years this particular record was sold?

Have you any way of helping?

MR. COUTURE: I think --

MR. RICH: Can I ask this? Sorry.

MR. COUTURE: If Mrs. Rosette can look at the date the record was first recorded, it might help.

THE COURT: Let her look at that.

THE WITNESS: That would apply to Lincoln Records, when I first wrote them. Wouldn't it? Yes, it would. Junior Records succeeded Lincoln Records. We have the exact dates of the incorporation some place and obviously when they were incorporated things went on their label.

Q Mrs. Rosette, if we continued tomorrow would you be able to bring for me the corporate books of Junior Records and Lincoln Records and the other corporation was--

A The corporate books? I doubt it. I have the corporate dates, but I wouldn't have the books.

Q What documents would you have showing the dates of incorporation?

A I would have the Treasure Records -- I don't

think I have the previous ones. I have the exact corporate dates on the seal.

Q What about Corona Records?

A That was the current company.

Q And that was more recently?

A Yes.

MR. COUTURE: This information is available in the County Clerk's office.

THE COURT: I assume it is, yes. On the other hand, I don't know how it would help. All it would do is give you a beginning date but doesn't give you an ending date.

MR. COUTURE: It was produced by Lincoln Records before Junior came in so the date of its first sale to the public precedes Junior (so even having Junior's date of incorporation won't date the record. It would date the jacket, not the record.

MR. RICH: I am just trying to date the jacket right now.

THE COURT: Obviously she doesn't know.

Q Could you give me your best recollection within a year or two as to when this record in this jacket was sold?

A To my best recollection I would say '52.

Q And I take that as being an approximate answer, Mrs. Rosette?

A Yes.

Q And this record jacket would have had the record inserted in it, is that correct?

A Yes.

THE COURT: What date did you say, '62 or '52?

MR. RICH: '52.

Q And these various compositions were for sale at that time on these various record numbers that are listed on the reverse side of this jacket, is that correct?

A Yes.

Q Was the composition Charlie Had A Choo Choo released and sold at about the same time in 1952 or before?

A I had not used that title since way back in Lincoln. We called it Runaway Choo Choo Train. I don't know how anybody else ever got hold of that title. It was only a short time at the very beginning of Lincoln.

Q And that would have been at or prior to 1952 that a record containing that composition came out?

A Yes.

MR. COUTURE: May I ask, do you mean initially released?

MR. RICH: Yes, originally sold and released on records.

Q Is that the way you understood my question, Mrs.

Rosette?

A Yes.

MR.RICH: I think this will save a little time as to release dates and that is why I am taking some time.

THE COURT: Are you asking me something?

MR. RICH: I am trying to explain my silence while I am going through this.

THE COURT: Oh, that is all right.

Q Perhaps I could ask you this, Mrs. Rosette. Were all of the compositions claimed by you in this lawsuit that is the subject of this action released and sold publicly on phonograph records at or prior to 1952?

A Sold prior to 1952?

Q Yes, in 1952 or before 1952.

THE COURT: Before, you say?

MR. RICH: Yes.

A All of them?

Q Yes.

A No, because there were a few of them I wrote later.

THE COURT: He is not asking when you wrote them, when you released them.

THE WITNESS: He wanted to know when they were sold prior.

THE COURT: Sold. You could have written and not sold them, that is what I am trying to call your attention to.

THE WITNESS: No.

Q What composition are you referring to?

A Alice In Wonderland was the latest composition.

Q When was that first released on records?

A That might appear in the Wonderland one.

Q To refresh your recollection, I call your attention to what was previously marked as Defendants' Exhibit A for identification Alice In Wonderland that you say was first mechanically reproduced on June 5, 1952. When did that first appear on a phonograph record that was sold to the public?

A It must have been around that date.

THE COURT: Let me ask you this then -- if you can't answer it don't -- but I thought Mr. Couture indicated that they would concede that a certain number of the compositions in suit were published in the sense of being sold on records prior to the statutory copyright being obtained on them; is that correct?

MR. COUTURE: That is true, although I wouldn't use the word published.

THE COURT: I [illegible] I withdraw that in a sense. Forget

I said published. I am not trying to get a legal effect out of this.

MR. COUTURE: I would certainly concede that nine songs were copyrighted long after the phonograph records had been distributed.

THE COURT: Is there a list of those nine compositions?

MR. COUTURE: Shall I read them, sir?

THE COURT: Yes.

MR. COUTURE: Pussy Kat Pussy Cat, Pinocchio, Mary Had A Little Lamb, Ding Dong Bell, Fiddle Deb Dee, also known as The Fly And the Bumblebee, Goosey Goosey Gander, Where Has My Little Dog Gone, Alice In Wonderland, Old King Cole.

THE COURT: All right. Are any of those--

MR. COUTURE: They are each one, your Honor--

THE COURT: Wait. Are any of those within the 22 certificates of copyright which is evidenced by Plaintiff's Exhibit 1?

MR. COUTURE: No.

THE COURT: None of them.

MR. COUTURE: I separated them for that reason.

THE COURT: Are they all in the nine copyright registration certificates which is within Plaintiff's

Exhibit 4?

MR. COUTURE: Yes, there are those nine.

THE COURT: Now I turn to you then, Mr. Rich, and I ask you whether you concede that the 22 songs, which are the subject of the certificates of copyright in Plaintiff's Exhibit 1, were all copyrighted before public sale?

MR. RICH: No, your Honor.

THE COURT: Which ones do you say were not?

MR. RICH: All of them.

THE COURT: You say all of them.

MR. RICH: That's right. I say that all of them were sold.

THE COURT: What?

MR. RICH: I say all of them were on record, sold to the general public before they were copyrighted.

THE COURT: That is, after 1949 and before 1951?

MR. RICH: Yes, your Honor. For example, if I may, your Honor, this has been marked -- I think they were marked in evidence. Defendants' Exhibits A and B -- yes, they were marked.

Your Honor will note from the answers to the interrogatories there that all of the mechanical reproductions-and I say sales after reading the demand for interrogatories and the response to the interrogatories -- were all prior to

the date of copyright. For example, Sleepy Time For Dolly was first mechanically reproduced and we say sold January 4, 1949. The date of copyright is May 12, '49.

Night Song For Little One first sales and reproduction January 24, '49, date of copyright May 12, 1949.

THE COURT: You will have to do better than that on proof.

MR. COUTURE: May I point out, too, your Honor--

THE COURT: That is why I asked you if you have any other proof.

MR. RICH: All I have on those, your Honor, are the interrogatories -- the demands for interrogatories and the interrogatories. The question was with regard to vending, distributing and reproducing and I think the answer is clear.

MR. COUTURE: The answer, your Honor --

THE COURT: I will look at that. To me by just glancing at it, I thought it referred to the making of the records.

MR. COUTURE: Absolutely, your Honor, it very clearly stat[illegible] --

THE COURT: I would assume it is possible to make a series of records on --

MR. COUTURE: It very clearly omits --

MR. RICH: In my experience, your Honor, I found you could record today and have it relased within a few days.

MR. COUTURE: There is no testimony that the releas was coincidental with these.

THE COURT: Whether you call them an affirmative defense or not, it obviously requires puncturing a hole in the plaintiff's case by actually showing if you are right on the law a sale before the statutory copyright. I can't presume this, there is no presumption. It is a question of facts and the burden of proof I think is on the defendant.

MR. RICH: With regard to the nine compositions --

THE COURT: That raises a question of law.

MR. RICH: That raises a question of law because there is no question those were sold prior to copyright.

With regard to the other ones, I am relying on the interrogatories which asked about the dates of first reproduction and sale and vending and distributing and the answer that was given. There was not any attempt that I could see to say all we did was reproduce on these dates and I don't want to answer your question.

THE COURT: There has to be an admission.

MR. COUTURE: It is clearly not an admission, and you have been misreading it.

THE COURT: I will look at that. Have you any

other proof?

MR. RICH: No, your Honor.

THE COURT: You may pursue cross-examination. I am not cutting you off. Since you have to go I think we better quit now.

MR. COUTURE: I would appreciate it.

MR. RICH: Can I ask one or two questions?

THE COURT: Yes.

Q With regard to those compositions, Mrs. Rosette,, what business records were there originally showing the release date of those records or of those songs?

A I wouldn't know that. By Lincoln?

Q Lincoln, yes.

A I wouldn't know that.

THE COURT: You will have to define what you mean by release date and whether that is equivalent to vending. In other words, if you give it to the distributor, that could be a release date, or a release date could be the date when the distributor is permitted to sell it to the company.

MR. RICH: Yes, your Honor. Let me do it first that way.

Q What business records does Lincoln have showing the date on which the phonograph records containing those

22 compositions were sent to distributors?

A I wouldn't know that. I wouldn't have any way of knowing that. I am not even sure we dealt with distributors in those first days, we might have dealt with stores directly, I wouldn't know.

Q What stores?

A We had all the leading distributors, when we used distributors, I think we had 30, Mid-American and all of them.

Q Where are the Lincoln business records today?

A Probably in some trash basket. I don't know. Or probably in the soil. I am sure they don't exist. That was way back in -- what was it '49 and '50?

Q Did they exist in 1966 and 1967?

A Definitely not.

Q They didn't?

A No.

Q Did they exist in -- well, if they didn't exist in 1966, can I ask where you got the information as to the dates that you put down in response to interrogatory 1C?

THE COURT: What is the date of those interrogatories?

MR. RICH: The dates, your Honor?

THE COURT: Yes.

MR. RICH: The date -- it was acknowledged on August 24, 1966.

THE COURT: That is the interrogatories in the federal case?

MR. [illegible]: Yes, your Honor.

THE WITNESS: Are you waiting for an answer?

Q Yes.

A Oh, those basic recording sessions as we expanded the catalog and had new recording sessions and bettered the composition.

THE COURT: That is not the question. The question is if you lost your books before 1966 how do you know how to list these compositions?

THE WITNESS: You are talking about the Lincoln books. I am talking about Junior Records. You said Lincoln.

THE COURT: Do you still have the Junior Record books?

THE WITNESS: No.

THE COURT: Did you have them in 1966?

THE WITNESS: I didn't have them. They were in the office, in my late husband's office.

THE COURT: The list of compositions here with a purporteddate whennthey were made, where did you get that list from?

THE WITNESS: Out of my diaries and engagement books and things like that at home.

THE COURT: Do you still have them here?

THE WITNESS: I got this from them, yes. I might still own old diaries and things. The old studio can check that out.

THE COURT: I am trying to find out what you don't have now that you didn't have in 1966 or what you still had in 1966 in answer to the interrogatories.

THE WITNESS: I would have those.

THE COURT: Bring them tomorrow.

THE WITNESS: I went over all these things to verify the dates of the recording sessions. That is all these are.

THE COURT: What you have is the date of the recording sessions and not the dates of sale?

THE WITNESS: Yes.

Q If you have those, I would like to see those, too, Mrs. Rosette. And also I would like to know why if you say these dates are the dates the songs were mechanically reproduced and just sold--

A Does that mean mechanically reproduced? When you go into a recording studio it comes on tapes and you can go through that whole tape and press the whole line, it doesn't mean you mechanically reproduce them.

Q Mrs. Rosette, did you look at this interrogatory

1C before you prepared the response?

A I can't imagine what my response would be because it is a matter of semantics.

Q In here they ask for the date that the musical reproductions of these songs were first made, distributed and vended. Now --

THE COURT: First, did you answer when you vended them, did you know when you vended them in 1966 when you answered that?

THE WITNESS: No, that would be in a business sales book, it seems to me. I just created them and presided at the recording sessions. After that it became a business transaction, to whom we sold them and when and in what quantity.

THE COURT: Did you have those books which would record the vending dates in 1966?

THE WITNESS: No, I never owned sales books, no.

THE COURT: There is your answer.

Q One more question. In answering these questions about the date of first vending --

A Vending means selling, doesn't it?

Q Yes. Did you believe that you were answering the interrogatory --

MR. COUTURE: I object.

THE COURT: Yes, objection sustained.

Did you intend to give a date of vending or to give only a date when those recording sessions were held on that date?

THE WITNESS: The recording sessions, because I wouldn't know about the vending dates.

THE COURT: You didn't purport to answer for vending, did you?

THE WITNESS: No.

THE COURT: You may go now.

10 o'clock sharp tomorrow.

(Adjourned to October 11, 1972, at 10 A.M.)

MARION ROSETTE

v. 66 Civil 3864

RAINBO RECORD MANUFACTURING CORPORATION, et al.

October 11, 1972
10:00 a.m.

(Trial resumed)

(In open court)

THE COURT: I hope you straightened a few things out yesterday between yourselves.

MR. COUTURE: I haven't spoken to him yet. I have prepared a chart, though.

THE COURT: I can't hear you.

MR. COUTURE: I have prepared a chart.

THE COURT: Did you show it to the other side?

MR. COUTURE: I am going to now.

(Pause)

THE COURT: I will keep these. These don't have to be marked. They are sort of briefs.

M A R I O N R O S E T T E, resumed.

MR. RICH: Your Honor, with regard to the charts that were just submitted to you, there are certain blank spaces with question marks, for first mechanical, m-e-c-h is mechanical, reproduction.

But, in any event, all of those were prior to or about the time of 1952, which plaintiff has testified to. In other words, it was then or before. It was 1950 or prior thereto.

THE COURT: You had better make that a little clearer to me. Where do you get it -- the third column?

MR. COUTURE: The fourth column. First title of song, cause of action keying it right into the complaint. For example, Sleepy Time for Dolly is the first cause of action.

THE COURT: The only thing I am interested in is what you call the fourth column -- I call it the third.

Sleepy Time for Dolly, where do you get a date of January 4, 1949 from?

MR. RICH: That is from the interrogatories that were marked in evidence as Defendants' Exhibit 1 -- A-1, and the next one was Defendant's Exhibit A.

THE COURT: What's the "2" next to it?

MR. RICH: It's either an L or a J. If you look at the upper portion of the record, J stands for Junior Records and the L stands for Lincoln. I took that from the interrogatory because that's the way they had it listed.

With regard to the date that the notice of use was filed, that's the fifth column; again, I obtained that

from the interrogatories which I believe corresponds to the notices of use that have been marked in evidence. And the last column where really my notes during the time of trial where I put down in evidence to show that certain copyright registrations were mared in evidence here, and those, of course, were Plaintiff's Exhibits 1 and 4 -- I don't recall if there were any others.

THE COURT: Let's mark them. What's the next plaintiff's number?

THE CLERK: 17, your Honor.

THE COURT: Mark it 17.

(Plaintiff's Exhibit No. 17 was marked for identification.)

(Defendants' Exhibit I was marked for identification.)

THE COURT: All right. What I want you to do is to look at each other's charts and tell me whether you agree that they are accurate. I mean, during lunchtime. And then let me know this afternoon.

CROSS-EXAMINATION CONTINUED

BY MR. RICH:

Q Mrs. Rosette, I show you what has been previously marked as Exhibit 14, letter dated May 17, 1966, from Mr. Couture to Playtime Records, and I ask you if at any

time prior to that date, either you or anybody in your behalf, made claim against Playtime Records, Rainbow Records Manufacturing Corporation, any of the defendants in this lawsuit, or Carousel or Sidney Taback.

A I never heard of Sidney Taback. Let me see that again, please.

(Pause)

A As far as I know, this was the first notice given you. As far as I know.

It was all in my lawyer's hands.

Q You said given me.

My question was, was there any notice prior to this letter given to any of the defendants in this action to Playtime, to Carousel, or to Mr. Taback.

A I wouldn't know. It was in the hands of my lawyers.

Q When did you give this matter to your lawyers for the first time?

A Well, immediately after finding some records on sale.

Q I didn't ask that.

MR. RICH: I ask that that be stricken, your Honor.

THE COURT: Strike it out.

Could you give me a date?

THE WITNESS: I wouldn't know the exact date.

Q Do you remember the year?

To refresh your memory, this letter is dated May 17, 1966.

A Well, that wasn't the time I instructed them to proceed. I mean, I probably notified them as soon as I found any infringing records. I wouldn't know the exact date.

MR. RICH: I move to strike that, too, your Honor.

Q Do you remember the year?

A I would imagine 1962 or 1963.

THE COURT: Now we are getting a very confused record.

What happened in 1962-63?

THE WITNESS: Well, I began to find infringing records.

THE COURT: We know that. When did you first tell your lawyer to make a claim?

THE WITNESS: Immediately.

MR. COUTURE: Your Honor, I think the witness is confused in that there were several --

MR. RICH: Your Honor, I object to this.

THE COURT: I don't object. I want to hear from the lawyer who was the lawyer.

Was he your lawyer at the time?

THE WITNESS: Yes, he was. Yes.

THE COURT: Let me hear what happened.

MR. COUTURE: There were several other infringements involved.

MR. RICH: There were other lawyers involved before Mr. Couture in this case.

MR. COUTURE: I am afraid the witness is answering in terms of the other infringements that were found as well. She is considering them all together.

THE WITNESS: That's right.

MR. COUTURE: And I think Mr. Rich's question is directed only to the infringements in this case.

THE COURT: Well, that's what we're asking about, this case.

MR. COUTURE: I think she is confusing the answer, your Honor.

THE WITNESS: I can straighten this out, I believe. I took my lawyers a complete set of all nine infringements they had found and they proceeded at their own discretion.

THE COURT: How long after you found out about these alleged infringements, one of which, at least, was

in December 1964, did you tell your lawyer to send a notice to Playtime, for example?

THE WITNESS: I didn't tell them how to proceed. I took them a list at the end of 1963.

THE COURT: '63?

THE WITNESS: A complete list, yes. A complete list of all the infringements I had found. The album, titles and contents.

THE COURT: You say all the infringements you found. Would that include these defendants?

THE WITNESS: Yes, it did.

THE COURT: Playtime?

THE WITNESS: Yes. Playtime, Carousel, Crown, and all the others.

THE COURT: Do you know any reason why there was no notice sent until 1966?

THE WITNESS: No, I don't.

THE COURT: Three years later?

The reason I asked you that is are you sure you told them as early as 1963 to complain against Playtime?

THE WITNESS: Yes, I am. I believe that the long-arm thing was supposed to have entered into it, but they were on sale all over New York, New York state. We bought quantities of them.

THE COURT: We didn't ask you when you bought them.

THE WITNESS: That's what caused the delay in going ahead with them.

THE COURT: What?

THE WITNESS: That was supposed to be a defense, the long-arm thing, they were supposed to have had their place of business in California.

THE COURT: You mean you couldn't serve them; is that it?

THE WITNESS: That's what I was told.

Q You mean the long-arm statute in New York to get jurisdiction; is that what you are talking about?

A Yes. Yes.

Q Mrs. Rosette, I show you Exhibit 8, which is a certificate of registration by Peer International Corporation for the song, Mother Goose Party, and I ask you if this is the original certificate that was filed, and I call your attention to the fact that there is no notice at the lower right-hand corner about a fee being received, and the usual stamp by the Copyright Office.

A There is a stamp.

Q You are referring to the upper right-hand corner?

A Do you want the original copyright date of Mother Goose?

Q No. I show you now Exhibit 9, which is a letter to Lincoln Records, dated July 26, 1955, from Peer International Corporation.

A Yes.

Q Was the assignment or purported assignment of all rights to Mother Goose Party ever recorded in the Copyright Office?

A An assignment?

Q Yes.

A They asked only for sheet music rights, different copyright number. That was originally in the Lincoln line.

Q I am a little confused.

THE COURT: I didn't get that answer.

(Record read)

Q So that I understand your answer, are you saying that Peer International Corporation did not receive a copyright for all purposes with regard to the musical composition?

A No, only sheet music.

THE COURT: Only sheet music?

THE WITNESS: Right.

Q Was a certificate of registration ever filed?

Was the song ever copyrighted with regard to other uses besides sheet music?

A Copyrighted by us for recording uses? My original copyright?

Q Do you have that copyright here?

A Yes. You have it on your list, too.

THE COURT: Which copyright are you speaking of?

THE WITNESS: Mother Goose Party.

Q Well, Mrs. Rosette --

THE COURT: Mother Goose was copyrighted originally by Peer International, and then they assigned the rights to you; is that right?

THE WITNESS: That wasn't the way I understood it.

THE COURT: That's what the record shows, Exhibit 8 is the certificate of copyright registration to Peer International for the Mother Goose Party, showing the author to be Marion Rosette; that was January 2, 1951.

Plaintiff's Exhibit 9 is a July 26, 1955 assignment by Peer International to Marion Rosette of the rights previously granted.

MR. COUTURE: Your Honor, the witness has previously answered in direct testimony that she had authorized Peer International to obtain a copyright for her

in response to your question.

THE COURT: That's why I wanted to straighten her out. I think the original copyright was to Peer showing Mrs. Rosette as the author. Then there was an assignment of all their rights back to Mrs. Rosette; is that correct?

MR. COUTURE: Back to Lincoln.

THE COURT: Not to Lincoln. Plaintiff's Exhibit 9, let's look at it.

MR. RICH: Yes, your Honor, it was an assignment to Lincoln and we don't have any assignment after that assignment.

MR. COUTURE: We have the 1951 assignment from Lincoln to Rosette.

THE COURT: Right; and then we had a 1955 assignment.

MR. COUTURE: To Lincoln.

THE COURT: No, by Peer to Marion Rosette.

Let me see Exhibit 9.

This is to Lincoln, isn't it? All the assignments of Mother Goose are to Lincoln; is that right?

MR. RICH: I didn't hear you.

THE COURT: All the assignments of Mother Goose are to Lincoln from Peer, not to Mrs. Rosette.

MR. RICH: That's right. This letter of July 26, 1955 is from Peer to Lincoln Records.

THE COURT: Yes.

MR. RICH: Not to Mrs. Rosette.

THE COURT: Yes.

THE WITNESS: Any assignment from Lincoln is to me because it was returned immediately in my name. The Library of Congress has verified that. It has to stay in the original Lincoln registration, but they were all returned to me in my name, so it's understood, since I was Lincoln, it was after that considered in my name by anybody dealing with me.

Q Well, Lincoln Records, Inc., was a corporation, was it not, Mrs. Rosette?

A Yes.

THE COURT: You don't have to ask her about this.

MR. RICH: All right.

Q Now, Mrs. Rosette, do you have any document after July 26, 1955 showing that Lincoln Records assigned this composition of Mother Goose Party to you individually?

A Haven't you that there? I have one that ASCAP received from them authorizing them to put it in my catalog in my name.

Q I do not have any written assignment or document

from Lincoln Records to you with regard to Mother Goose Party? Do you have such a document?

THE COURT: Let me ask for a moment.

I asked you this before, Mr. Couture, where are the records of what happened to Lincoln? Was it dissolved? Was it liquidated? Who was the transferee? You can get an assignment of copyright by liquidation, I assume, as well as by any other method.

MR. COUTURE: As I understand it, your Honor, Lincoln came into the control of another party at this time. Mrs. Rosette doesn't know those facts.

THE COURT: What time was that?

MR. COUTURE: I would have to ask her.

THE COURT: Did you ever sell Lincoln?

THE WITNESS: No, no. My late husband remained in control at an office in New York after they moved in Philadelphia.

THE COURT: Who got Lincoln eventually?

THE WITNESS: I don't know. There was one buyer, I believe, and no sub-license.

Do you remember who the first buyer was?

MR. COUTURE: The point is, was there a buyer?

THE COURT: Was there any buyer? Did he buy the stock? That's the question.

THE WITNESS: I don't know.

You would have all the papers in connection with that because I gave them to you.

I know it never functioned as Lincoln.

THE COURT: Well, on this record, I must say there is a presumption of continued ownership, unless you can establish that there was a sale.

THE WITNESS: I think it must have gone out of existence.

THE COURT: There is a problem, I must say, because the suit is brought in the name of Marion Rosette, plaintiff, and there doesn't seem to be any document showing assignment by Lincoln or even a license.

MR. COUTURE: I would say, your Honor, that the 1951 assignment from Lincoln to Mrs. Rosette of that composition, the copyright composition, would take effect then when Lincoln formally has the assignment back from --

THE COURT: Well, you can brief that, if you have a theory on it, but --

MR. COUTURE: Yes, I shall.

Q Mrs. Rosette, you also said that the only rights in the copyright that Peer International received were with regard to sheet music; is that right?

A Yes.

Q And that's the only copyright that was obtained by Peer or that they were authorized to obtain was with regard to sheet music?

A That's right.

MR. COUTURE: I object,your Honor.

THE COURT: So that the other rights in the composition --

THE WITNESS: -- remained with me.

THE COURT: -- had been assigned to Lincoln and reassigned to you and remained with you?

THE WITNESS: Yes.

Q Were they ever copyrighted?

A Of course.

Q Other than the copyright that Peer International received, were they ever copyrighted?

A That's a published copyright.

MR. COUTURE: It's beyond the technical legal competence of the witness.

THE COURT: Yes.

MR. RICH: Then I ask, it has been copyrighted, if there is any copyright other than the copyright that Peer International obtained, I ask that it be produced.

A You have it. You have my original copies. You have the list of copyrights.

Is that the only copyright you have?

THE COURT: My list, Exhibit 17 for identification, shows that based on Plaintiff's Exhibit 8, Mother Goose Party had a copyright registration on December 11, 1950, and that there was a notice of use regarding it on January 25, 1961.

MR. COUTURE: I don't see the problem, your Honor. This is a published copyright, EP.

THE COURT: And on your list, Defendant's Exhibit R for identification, it appears that the copyright date is January 2, 1951.

MR. RICH: Yes, your Honor. The date I took was the one from the exhibit that was just in front of us.

THE WITNESS: That's a published copyright. The other is a regular copyright. My original copyright.

THE COURT: The date of the notice for use, 1/25/61, you agree on that? There isn't that much difference between December 11, 1950 and January --

MR. COUTURE: Your Honor, I can explain it --

THE COURT: -- January 2, 1955?

MR. COUTURE: The date of receipt in the Copyright Office is January 2, 1951. However, the publication date is December 11, 1950, which is the proper copyright date.

MR. RICH: The date that I put down, your Honor, was the date --

THE COURT: I know. It's not that important.

MR. RICH: I also call to your Honor's attention that in the 41st line of the complaint, there is only reference to one certificate of a copyright that was ever obtained, and that was the one obtained on July 2, 1951, EP, 51850, which is Exhibit 8, and so apparently no copyright registration was ever obtained with regard to that song with regard to recording rights.

THE WITNESS: That is not true.

THE COURT: In other words, you are saying that there is no copyright other than the one issued to Peer International.

But, even so, if the arrangement between Peer International and the author was that Peer International was to have beneficial rights only in sheet music --

THE WITNESS: Exactly.

THE COURT: -- and they assigned back to her or to Lincoln, then what difference would it make?

MR. RICH: The witness has said that the only right that Peer International had was to obtain copyright with regard to the sheet music.

THE COURT: You can have them as your agent get

the general copyright. I don't see anything wrong with that.

MR. RICH: I am just going by her testimony, your Honor.

THE COURT: Well, I think we are confusing each other.

MR. COUTURE: I think the witness is confused, too, your Honor.

MR. RICH: Secondly, your Honor, in any event, there doesn't seem to be any kind of assignment back to Mrs. Rosette.

THE COURT: That's a legal point. There is no use asking her that question. You want to get facts from her.

But you had better, in your brief, Mr. Couture, show your chain of title quite accurately. In other words, whenever you rely on a reassignment by Lincoln Records, you had better clarify that.

MR. COUTURE: You mean with regard to this Mother Goose we are talking about?

THE COURT: Mother Goose or any others that come after the 1951 assignment.

THE WITNESS: It applies to my whole catalog.

Q Yesterday, we had marked as Exhibit B for

identification a letter dated November 10, 1953, from you to Whitehall, and we were discussing a schedule.

I show you a schedule --

MR. COUTURE: Your Honor, may I object. Counsel is again asking for testimony on a document not in evidence.

THE COURT: Finish your question and we will have a better record.

MR. RICH: Thank you, your Honor.

Q I show you a document marked Schedule A, which apparently was marked as an exhibit in another proceeding, and I ask you whether or not this is the schedule to the November 10, 1953 letter.

MR. COUTURE: I object, your Honor.

THE COURT: All right. I am going to exclude all this on the same theory which I excluded all evidence relating to a competing claim of right which was not set forth in an affirmative defense.

MR. RICH: Your Honor had asked yesterday for me to produce the schedule that this referred to and this is what I am doing now.

THE COURT: I know what I did. I am saying that at the time I had two grounds, one of which was the incompleteness of the document; the other one is what

I ruled again now. So that assuming that this is the annex of Schedule A to the exhibit that was offered without a schedule attached, I would then rule on the basis of my second ruling, if that will get you any further.

But, on the other hand, in order for you to preserve your record on appeal, I will let her answer just that one question and then pursue it, just the question of whether or not she knows that this Schedule A is the schedule that was attached to the assignment from Whitehall. If that's what you are talking about.

A Yes, that's the schedule.

THE COURT: That is the schedule.

MR. RICH: At this time I am asking that that schedule be marked in evidence.

THE COURT: Yes, have that marked for identification.

MR. RICH: And also Exhibit B that had been previously marked for identification to be marked to go in evidence.

THE COURT: I won't have them in evidence, but they can be marked for identification, and in the event of an appeal, they may be transmitted to the Court of Appeals with the record.

MR. RICH: Your Honor, I just want to note for

the record that it seems improper to me to have the witness who is in the box now discussing this exhibit with her attorney, and her attorney is apparently calling certain things to her attention.

I just want to note that I think it's wrong.

THE COURT: Go ahead.

MR. COUTURE: I object to the admission of this as evidence, either Defendant's Exhibit B for identification --

THE COURT: To what?

MR. COUTURE: I object to this B, and to the schedule. I don't know what it's going to be marked.

THE COURT: I said that I would have it marked -- why don't you listen to me? I said it would be marked for identification, not received in evidence, and be made part of the record if there should be an appeal, so that the ruling on my exclusion of it can be reviewed.

MR. COUTURE: I have an additional objection to its admission into evidence.

THE COURT: State it.

MR. COUTURE: I want to know what this schedule is going to be marked for identification. Is it part of this B?

THE COURT: It doesn't make any difference.

Mark it together. Make it B-1.

(Defendants' Exhibit B-1 was marked for identification.)

MR. COUTURE: My objections are that it's not the best copy, it's a photocopy; there is no indication, though it's a letter addressed to Whitehall Mercantile Corporation, there had been no testimony or indication that it was ever received or accepted by that company.

MR. RICH: In answer to that, your Honor, I just want to call your attention to the answers to written interrogatories which were marked as Defendants' Exhibit A, which said that -- on Page 11 to Page 12, that master tapes were pledged with Whitehall as collateral under a loan agreement dated March 2, 1953 by Junior Records, the corporation to whom plaintiff, which is Marion Rosette, had granted a license for mechanical reproductions of the subject musical compositions, said Junior Records defaulted on the loan, and the master tapes were taken by Whitehall under the aforesaid collateral loan agreement.

These tapes included a separate tape for each composition --

THE COURT: What are you reading from and what are you talking about?

MR. RICH: Well, there was just an objection made by Mr.Couture.

THE COURT: For the record, I ruled. I let him talk because I don't like to stop the lawyers, and he has the right to tell me another objection.

MR. RICH: I ask that we mark for identification, your Honor, the complaint answer and reply in the Supreme Court, New York County action of Eichler Corporation --

THE COURT: You don't have to ask me for the right to mark something for identification. Just mark it.

(Defendants' Exhibit J was marked for identification.)

Q Mrs. Rosette, do you recall the number of songs that were in the Junior Records catalog as of April 21, 1955, or about that time?

A I think approximately 98.

Q And did those songs include the songs which are the subject of this action?

A Yes, they did.

MR.RICH: Your Honor, at this time I ask that all the documents that had previously been marked for identification, the defendants' exhibits for identification, be marked in evidence.

THE COURT: You can't do it that way. You have to do it one by one.

Call my attention to each.

MR. RICH: Yes, sir.

MR. COUTURE: Is Mrs. Rosette --

THE COURT: Exhibit B has been ruled on. That's excluded.

MR. RICH: And B-1.

THE COURT: And B-1 is excluded.

MR. RICH: I ask that Exhibit C be received in evidence on the theory, your Honor, it's all part of a showing that Mr. Taback had received the rights to have these record pressed.

THE COURT: On that basis, I will exclude it.

MR. RICH: The same for Exhibit D.

THE COURT: Because of the surprise element I indicated earlier.

MR. RICH: The same for Exhibits D and E.

MR. COUTURE: Should I make additional objections I might have in the ordinary course to these? I don't want to burden the record, but there are other objections that if you had ruled these were acceptable under the amended answer, then I'd have other objections to some of this material.

THE COURT: State your objections.

MR. COUTURE: On C, the letter from Rosette to Audio Matrix, it's not the best copy. It's a photocopy of a letter. Once again --

THE COURT: Are you objecting on the best evidence rule?

MR. COUTURE: On this --

THE COURT: Because it's a photostat?

MR. COUTURE: Yes, sir, for the record.

MR. RICH: I ask that Exhibit D be marked in evidence for the same reason.

THE COURT: Same ruling.

MR. RICH: I ask that Exhibit E be marked in evidence.

THE COURT: Same ruling.

MR. RICH: I ask that Exhibit F be marked in evidence.

THE COURT: Same ruling.

MR. COUTURE: My objection to Exhibit F, your Honor, is that it purports to be a letter or agreement between Aaron Eichler and Stanley Natelson and there is no foundation for this.

MR. RICH: Whitehall.

THE COURT: Whitehall is Stanley Natelson.

MR. RICH: I would also ask that Exhibit G be marked in evidence.

THE COURT: What's the relevance of that?

MR. RICH: This is the stipulation, your Honor, in the case of Eichler Record Corporation against Junion Records, Marion Rosette, and others, under which Mrs. Rosette stipulated that Aaron Eichler had the rights to the various tapes that were acquired from Whitehall and these were the rights that we contend that Mr. Eichler gave to Mr. Taback.

THE COURT: That's the issue you sought to raise by the supposed amended answer to the affirmative defense?

MR. RICH: Yes, your Honor.

THE COURT: I will exclude it.

MR. RICH: I also ask that Exhibit H be marked in evidence.

THE COURT: That's received.

(Defendants' Exhibit H for identification was received in evidence.)

MR. RICH: Exhibit I has been marked in evidence, your Honor.

THE COURT: No, it's just for identification. It's a chart. You don't have to mark that in evidence.

MR. RICH: And I ask that Exhibit J be marked in evidence.

THE COURT: What's J?

MR. RICH: That's the complaint answer and reply in Eichler.

THE COURT: What's the relevance of that?

MR. RICH: The same as I indicated before.

THE COURT: Excluded.

Give me that again, complaint in what action?

MR. RICH: It's a complaint, answer and reply in the Supreme Court, New York County action, of Eichler Record Corporation, plaintiff, v. Junior Records, Inc., Marion Rosette, and others; and the stipulation of settlement was made in this action.

THE COURT: Excluded on the same ruling.

MR. RICH: I have no other questions.

THE COURT: Do you have a verified answer there in Exhibit J? Let me see that.

MR. RICH: I don't believe so, your Honor.

THE COURT: Have you finished cross-examiantion?

MR. RICH: Yes, your Honor.

THE COURT: Any redirect?

MR. COUTURE: Yes, sir.

REDIRECT EXAMINATION

BY MR. COUTURE:

Q Mrs. Rosette, at the time that you were involved with Lincoln Records, Inc., and at the time you were first recording, that is, for the very first time, the record sessions for the compositions that are the subject of this complaint, what was your role in the company? What did you do for Lincoln Records at that time?

A I did all the creative work, words, music, script, dialogue, coaching the singers, interviewing artists for covers, cover designs, writing liner copy, okaying the labels, preparing the couples for A and B sides; all that took me an enormous amount of time after the recording sessions.

Q Were you at the recording sessions?

A Oh, yes. I had to okay everything and I even edited them.

Q Was there work to be done at the recording sessions before records were first released to the general public?

A If I didn't like something, we did them over again at another recording session. If there were no flaws -- there were no tapes at that time. We were awfully handicapped -- we include them again in another recording

session until they were perfect.

Q Was there more to do with the record itself before it was sold?

MR. COUTURE: I'm sorry. Strike that.

Q Were there steps to be taken by the company or by you before you actually sold them to the public?

A There were an enormous number of steps. The recording session was simply cutting the thing on a master tape, then there had to be master mothers and labels, coupling of the two sides, interviewing cover artists, okaying the sketches that they brought which sometimes took months, and then making a common back liner for the whole catalog before the things were ready for sale, so, ostensibly, an enormous amount of time could elapse between the recording session and the actual placing on sale.

Q Would that vary from record to record, this amount of time?

A Well, no, that process was standard.

Q Well, generally, then, could you estimate within some reasonable range how long it would be from the date of the recording session before there was an actual sale to the public?

A No, I couldn't, because some of the recording

sessions began as early as 1947 and continued as late as '51. We had a big cast and an orchestra.

THE COURT: I don't think that's what you are being asked. You are asked, with respect to a particular composition, was there a general average of time between the recording session and, let us say, the time that the pressed record reached the distributor.

THE WITNESS: Well, it would be hard to say, because they were reduced -- they were sold as a lot. They weren't sold individually. They were sold as a whole set. And it had to be when the catalog was complete.

THE COURT: Between the time of the last recording session and of the last composition that was included within the group, how long would it generally take?

THE WITNESS: That would be subject to those delays, approximately for, I would say, at least around six months, I would say. Sometimes a little less. Depending on how lucky we were with the cover artists and things of that sort, or the successive proofs of labels, and things like that.

Q In your duties at Lincoln Records, did you ever handle the business end of it? Did you deal with the distributors?

A No, I didn't have anything to do with business.

Q Never?

A Never.

Q As your and your husband's involvement with Lincoln Records drew to a close, did you, yourself, retain any of the business records?

A No, I never had anything to do with that.

Q Do you have, or have you ever had, yourself or in your apartment or someplace where you might keep things, records that would indicate the dates on which the finished product was finally delivered to a distributor or to the market?

A No, I never had occasion, not until my current company when my secretary brought some things from her office which were no longer useful to her.

Q Did they include records, business records, that might indicate when the goods were actually shipped to distributors?

A Only the current company, no previous company. I wouldn't have had any business records.

Q We are talking about the original productions that would be Lincoln Records.

A No, I wouldn't have anything of that kind.

Q Did you have any of those records in 1966 or 1965?

A No, I didn't.

I had a letter of thanks from a pressing order, I think in '51, that I think I gave you, from Sy Leslie who did our pressing in those days, but that wouldn't indicate when they went on sale. He was pressing them. They went on sale later, I imagine. I believe they went on sale late in '51.

Q In the Mother Goose composition did you --

MR. COUTURE: Strike that.

Q Was Pier International Corporation authorized by you to obtain copyright registration of that song?

A Sheet music only. It's on my original Lincoln list and they returned it to me.

Q Explain what you mean "for sheet music only," please.

A They weren't a record company. They wanted sheet music rights. I gave it to them. There was no conflict between that and my copyright.

Q Did you retain the right to make mechanical reproduction?

A Always. Always.

MR. COUTURE: Please mark this for identification.

(Plaintiff's Exhibit No. 18 was marked for identification.)

Q Mrs. Rosette, I show you Plaintiff's Exhibit 18 and ask you if that's your signature on the bottom and that of your husband.

A Yes, it is. Yes.

Q Do you recall executing this document?

A Yes, I do.

Q Was this your -- was this the only agreement between Lincoln Records and Peer International?

A That's the only one, yes.

MR. COUTURE: I offer this in evidence, your Honor.

MR. RICH: I have no objection.

THE COURT: Received.

(Plaintiff's Exhibit No. 18 for identification was received in evidence.)

MR. COUTURE: I would like to offer into evidence, your Honor, Plaintiff's Exhibits 6 and 7 marked for identification.

THE COURT: You still have the gap here that there is no written assignment by Paull-Pioneer. I will have to exclude them. There is no change of title.

THE WITNESS: Your Honor, the document exists. Either I have it at home or ASCAP has it.

THE COURT: It's too late now. You should have

had it here. I explained that yesterday, that I can't take these documents in. They prove nothing unless they show change of title.

MR. COUTURE: I think it can be taken in evidence and if, subject to my briefing the question --

THE COURT: No. I will exclude it subject to your briefing the question. In that sense I will exclude them now. If, at the conclusion, on the brief I determine that they are admissible I will notify counsel and they will be admissible. We are trying it without a jury.

But, at the moment, I will exclude them.

THE WITNESS: They never had anything published by the sheet music rights. They never had anything to do with my original copyrights.

MR. RICH: I move to strike that, your Honor.

THE COURT: Strike it.

MR. COUTURE: I have no further questions.

MR. RICH: I have.

RECROSS-EXAMINATION

BY MR. RICH:

Q Mrs. Rosette, I refer you to Exhibit 18 which is an agreement dated October 18, 1950, between Lincoln Records and Peer International Corporation, and I ask you why if Peer International only had right with regard to

sheet music it was obligated to pay you or pay Lincoln, rather, 50 percent of all amounts received from licenses authorizing the manufacturer of parts of instruments serving to mechanically reproduce the work which is phonograph records?

MR. COUTURE: I object to that question, your Honor.

THE COURT: Overruled.

A I don't understand that, inasmuch as they were a publishing company and not a record company.

Q You can't answer that question?

A That's the only answer I have.

Q Did Peer International come out with sheet music with regard to Mother Goose Party?

A Only professional copies. They were never placed on sale. That's why I asked for it back.

Q And when did it make those professional copies?

A I think around 1951.

Q The date of this agreement was October 18, 1950. Does that refresh your memory?

A Yes.

MR. COUTURE: I think the witness has answered.

A Around 1951. I thought I had brought one with me.

Q Do you have one with you?

A No, I haven't. They neve: put it on sale. It was only professional copies, black-and-white professional copies.

THE COURT: Which composition are we talking about now?

THE WITNESS: Mother Goose Party.

Q You were just referring to the business records of Junior Records and Lincoln Records.

How long were the business records maintained by these companies?

A How long were they maintained? I imagine as long as the company maintains its business records. I don't know.

Q Do you have any idea?

A No.

THE COURT: You mean until what date?

MR. RICH: For how long a period of time, yes.

Q My first question is for how long a period of time, assuming there was a sale or sales of records in 194, until what period of time would Lincoln or did Lincoln and Junior Records keep its business records showing such sales?

A I would imagine for years and years, as long as

they were necessary.

Q How many years, if you know?

A I wouldn't know.

Q When you say --

A Most likely until and after Junior Records succeeded Lincoln, as long as they were necessary.

Q You say you were unable to locate the business records now.

Until what period of time were they in existence?

MR. COUTURE: I think she said she doesn't know, your Honor.

THE COURT: Read that question back.

(Record read)

THE COURT: In existence? That's a hard question to answer. Rephrase the question.

MR. RICH: I will rephrase it.

Q With regard to sales which may have taken place in 1949, 1950 and 1951, until what period of time did Lincoln Records or Junior Records maintain its sales invoices concerning those sales in those years?

THE COURT: If you know.

A I don't know the date exactly.

Q Were those business records discarded prior to the institution of this lawsuit?

A I would imagine so.

Q Do you know?

A I haven't --

THE COURT: That's a very vague question. You say "those business records."

Q Do you know whether the sales invoices of the compositions of records containing the compositions which are involved in this lawsuit were in existence at the institution of this lawsuit, which was in about November of 1966?

A I imagine I might have some.

You mean sales sheets?

Q Any business records indicating sales, yes.

A Of Wonderland, Junior records?

Q Yes.

A I imagine so. If not, I might be able to get such things from some of the distributors.

Q Do you know?

A No, I don't know the dates.

THE COURT: Anything else?

MR. RICH: No, that's all, your Honor.

THE COURT: Anything else?

MR. COUTURE: Plaintiff rests.

THE COURT: Plaintiff rests.

You may step down, Mrs. Rosette.

We will take a short recess, five-minute recess.

(Witness excused)

(Recess)

(In open court)

THE COURT: Defendants' case.

MR. RICH: Yes, your Honor.

Before I present defendants' case, I have certain motions, if I may.

THE COURT: Yes.

MR. RICH: Your Honor, first, at the end of plaintiff's case, I move --

THE COURT: You had better come closer because the acoustics aren't clear. Speak more distinctly, too.

MR. RICH: I move that the entire complaint against the defendants be dismissed on the ground that the plaintiff has not shown that any of the defendants pressed or manufactured phonographic records containing any of the musical compositions of the plaintiff, and that the plaintiff has not shown any infringement of any of her copyrights by any of the defendants in this action.

THE COURT: I will hear you on that one.

MR. COUTURE: Your Honor, the defendant has -- plaintiff has testified that she has listened to the phonograph records.

THE COURT: What?

MR. COUTURE: Plaintiff has testified that she has listened to the photograph records, compared them with her own composition, and found them to be infringing.

THE COURT: How do you connect them with these defendants? How do you prove that they are the ones that pressed it any more than I pressed it?

MR. COUTURE: We have in evidence -- I had expected -- we have in evidence the correspondence between me and the defendant, which they responded that they -- it would be the letter from Rainbo records, Mr. Brown, stating that they no longer are pressing that line, that they stopped two years ago.

THE COURT: What is that exhibit number?

MR. COUTURE: The correspondence is Exhibits 14, 15 and 16.

THE COURT: Let me see those.

Well, I think Exhibit 15 is an admission that says we would like to see your contract regarding the works you refer to inasmuch as we have a "hold harmless" agreement when we purchased the entire catalog. That's

true, that doesn't prove that they actually pressed the records, but it seems to me an admission that they had the right to do so.

MR. COUTURE: That places the burden on the defendant to go forward.

THE COURT: I think it does.

MR. RICH: If I may comment on this.

First of all, it advises that Carousel and Playtime had been inactive for two years. It doesn't say when any of these records were manufactured or sold. They may have been sold quite a period of time before that. So there is nothing in that first paragraph which would show at all that any of these records -- that Rainbo Records, you see, had anything to do with any of these phonograph records at that particular point of time.

THE COURT: It's referred to as the Playtime line, so if you don't own the line you wouldn't refer to it as that.

MR. RICH: This refers to a line that has been inactive for a period of time.

THE COURT: Whose line? Whose line?

MR. RICH: I don't know. I can't comment on what line, your Honor, because this doesn't say. This doesn't say if it's the Carousel and Playtime line or --

THE COURT: Make it short. I will reserve decision on this motion. You can brief it.

Have you any other motions?

MR. RICH: Yes, I do, your Honor.

I also ask the Court to permit us to amend the complaint to add on a cause of action based upon facts we learned here at the time of trial for the first time and the defense is one of laches.

The plaintiff yesterday testified that she first purchased the alleged infringing phonograph record albums in 1962 or some of the albums, in 1962.

This morning, she testified that she purchased them in 1963, and that she didn't go forward and sat on her rights for more than three years, because she couldn't get jurisdiction over the defendants in New York.

In that period of time, many things have happened. One, information and records and testimony and witnesses which would have been available to the defendants in this action have all been lost to the defendants.

Mr. Taback, who we discussed earlier, and has been mentioned, had died. Mr. Eichler is nowhere around. Nobody knew about the Whitehall situation, which was an absolute, complete defense to this action.

All of these things could have been raised, all

of the witnesses would have been available, all the testimony and evidence would have been available for the Court had this lawsuit been brought expeditiously.

As I say, plaintiff knew about her rights and she waited for more than three years, even beyond the statutory period of time.

THE COURT: Which of the three years are you speaking of?

MR. RICH: The lawsuit was begun, your Honor, I believe, sometime in November of 1966. The plaintiff testified that she knew about these sales and had purchased at least some of the albums -- yesterday she testified in 1962, today she changed that to sometime in 1963.

In any event, that's more than three years later. She sat on her rights for more than three years.

And all of this, a complete defense, was lost to the defendants because --

THE COURT: You are not pleading statute of limitations.

MR. RICH: I am talking about laches.

THE COURT: Statute of limitations runs only from the date of the last infringement; is that correct?

I will reserve decision on that.

MR. RICH: Also, your Honor, I move to dismiss

THE COURT: Do you know what time of year?

causes of action from 18 and 19 and 25 through 40 on the ground that plaintiff has admitted that phonograph records were released for general sale to the public long prior to that time, and prior to the time that copyrights had been obtained.

THE COURT: I will reserve decision on that.

MR. RICH: I also move to dismiss the 41 cause of action,which is the Mother Goose Party record, on the ground that plaintiff has not shown any reassignment to her from Lincoln Records.

Your Honor will recall that Lincoln Records had received a composition from another company.

THE COURT: I will reserve decision.

MR. RICH: I also move to dismiss the 42 cause of action which concerned Katie the Kangaroo, on the ground that there was no instrument in writing showing that there had been an assignment with regard to that composition at all.

THE COURT: I will reserve decision.

MR. RICH: I also move that in the event any infringement is found, that there be no damages awarded for any alleged infringement that occurred prior to January 25, 1961 with regard to those compositions in which a notice of use was filed on that day, and that no

damages be found with regard to the period of time prior to any of the notice of uses.

THE COURT: I don't understand your motion.

Are you talking about damages or are you talking about statutory, compulsory statutory license fee?

MR. RICH: I am talking about damages, your Honor.

THE COURT: You concede that damages may be given?

MR. RICH: No. I said that in the event --

THE COURT: In the event that I find that there was infringement after the filing of the statutory copyright and notice of use, I can give damages?

MR. RICH: No, your Honor. My motion is two parts:

One is that the filing of a notice of use after phonograph records were released to the general public, completely wipes out any cause of action that plaintiff may have with regard to those compositions.

In the alternative, I ask --

THE COURT: That's a little confusing, that motion. You must have a better motion than that.

MR. RICH: Perhaps I had better read it.

First, this may be repetitious --

THE COURT: Make your own motion in your own way. I won't comment.

MR. RICH: Perhaps I didn't word it very properly.

By virtue of plaintiff's failure to file with the Register of Copyrights a notice of use of the compositions for mechanical reproduction, until after the compositions had been previously licensed to other record companies and the records had been sold pursuant to the licenses, the plaintiff is barred from bringing an infringement proceeding for violation of these copyrights.

THE COURT: I will reserve decision.

MR. RICH: And, in any event, your Honor, that if the Court finds any infringement, which I submit that it should not, that no damages would be awarded prior to the time that there was any alleged infringement prior to the time of the notice of use being filed.

THE COURT: I will reserve on that motion.

Does defendant wish to go forward?

MR. RICH: Yes, sir.

THE COURT: Go ahead.

J A C K G. B R O W N, a defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. RICH:

Q Mr. Brown, are you one of the defendants in this lawsuit?

A Yes.

Q And are you also associated with the defendant Rainbo Record Manufacturing Corporation?

A Yes.

THE COURT: Rainbo Record what?

MR. RICH: Rainbo Record Manufacturing Corporation.

Q Are you an officer of that company?

A Yes.

Q And for how long a period of time have you been associated with that defendant?

A Since its inception.

Q When was that, sir?

A 1946.

Q Could you tell the Court the nature of the business of Rainbo Record Manufacturing Corporation?

A It's a custom record manufacturing pressing plant.

Q Could you explain what that is?

A It's a plant wherein we receive metal components to reproduce phonograph records in a mass way.

Q Mr. Brown, were you ever in partnership with Harold E. Markowitz, who was also named as a defendant in this lawsuit, doing business as Rainbo Records?

A Yes.

Q What was the nature of the business of that partnership?

A We used to manufacture what they called home recording disks. They were a blank coated, either paper-coated or metal-coated blank disk, upon which you recorded instantaneous messages.

Q Is that the same thing, pressing records as Rainbo Manufacturing calls pressing records?

A No, it's quite different.

Q Did Rainbo Records, the partnership with you and Mr. Markowitz, ever press records?

A Not --

Q I am talking about vinyl records of the kind that we have here.

A No.

Q Did there come a time when Rainbo Records, the partnership, terminated?

A Yes.

Q It was dissolved?

A Yes.

Q Could you tell the Court when that was?

A In 1949.

THE COURT: What happened then, the partnership was dissolved?

MR. RICH: Yes.

Q Did Mr. Markowitz remain associated or become associated with Rainbow Record Manufacturing Corporation at the time of the dissolution of the partnership?

A Yes.

Q And for how long a time was he associated?

THE COURT: How do you spell his name?

MR. RICH: M-a-r-k-o-w-i-t-z.

A For a very brief period.

Q And do you recall approximately when he terminated his relationship with the corporation?

A In 1950, I believe.

Q Did you know a man named Sidney Taback?

A Yes, I did.

Q Were you ever associated in any company with Mr. Taback?

A Yes. There was the beginning of a company.

THE COURT: A what?

THE WITNESS: A beginning of a company.

Q What was the name of that company?

A Lyric Records.

Q When was that company formed?

A In 1960.

THE COURT: Was that a corporation?

THE WITNESS: It was to be a partnership.

THE COURT: A partnership? You and Taback were partners?

THE WITNESS: Yes, that was part of the partnership.

Q Could you tell the Court the other partners?

A Selig Smith.

Q So the partnership consisted of those three persons, you, Mr.Taback and Mr. Smith.

What was to be the nature of the business of Lyric Records?

A The production and sale of phonograph records.

Q Could you tell the Court what happened to the partnership?

A Well, almost, I would say, within thirty or so days after the agreement to become partners, there was an agreement to dissolve, and the partnership then dissolved.

Q Were there any papers, if you know, filed which refer to this partnership being organized?

A Yes. At the time of the inception, things were put into motion and subsequently papers were filed.

Q And how long after the partnership was formed did the partnership cease as a partnership?

A You mean as an actual working partnership?

Q Yes.

A I would say in about thirty or so days, thirty, forty-five days.

Q After the three of you ceased being partners of Lyric Records, did anyone continue to use the name Lyric Records?

A Mr. Taback continued to use the name Lyric Records.

MR. COUTURE: Excuse me. I didn't hear the answer.

THE WITNESS: Mr. Taback continued to use the name of Lyric Records.

Q After the time of that thirty-day period of time that you referred to, were you associated in any way with Lyric Records, from a financial standpoint?

THE COURT: With what?

MR. RICH: After that thirty days.

THE COURT: With what? With whom?

MR. RICH: With Lyric Records.

A No, we no longer had any financial association.

Q Did any of the defendants in this lawsuit have any association with Lyric Records after that thirty-day period after Lyric was formed?

A No.

Q Did there come a time when there was a formal dissolution of the partnership?

A Yes.

Q Do you recall when that was?

A Yes. In February of '63; 1963.

Q Do you know why a formal dissolution took place at that time?

A Yes. Selig Smith was advised of this existing partnership and he immediately had it dissolved legally.

Q I show you an item from a newspaper which refers to a certificate of discontinuance of use and/or abandonment of fictitious name of Lyric Records, and ask you if this item was taken from a newspaper which published the dissolution.

A Yes, it is.

MR. RICH: I ask that this be marked in evidence.

(Defendants' Exhibit K was marked for identification.)

MR. COUTURE: No objection.

(Defendants' Exhibit K for identification was received in evidence.)

Q On the certificate I note that there is an address 4335 West 147th Street, Lawndale, California.

At the time in 1960 when the partnership was formed, whose address was that?

A That was the address of Rainbo Record Company.

Q After the partnership stopped being a partnership, which, as you testified, was thirty days after it was formed, did Lyric Records use the address or did it have a place of business at 4335 West 147th Street in Lawndale?

A No.

Q Did Lyric Records have an office or a place of business at 4335 West 147th Street after that thirty-day period of time after the partnership was formed in 1960 to any time thereafter?

A No.

Q Do you recall where Mr. Taback conducted business, what his address was?

A 1540 West Pico Boulevard, Los Angeles

Q Do you know if Lyric Records also maintained another mailing address?

A Yes, they had a post office box in Lawndale.

Q Did you ever receive any money or profits from Lyric Records?

A No.

THE COURT: Which are you talking about now, the partnership?

MR. RICH: Yes.

THE COURT: The successor?

MR. RICH: Either.

Q Either the partnership or the successor that was operated by Mr. Taback?

A No. No.

Q Mr. Brown, I show you what has been previously marked as Exhibit 14, which is a letter from Mr. Couture to Playtime which contains a number of songs which were allegedly written by the plaintiff in this action, Mrs. Rosette, and I ask you if you ever claimed to have an interest in any of the compositions written or adapted by Mrs. Rosette.

THE COURT: What was that?

MR. RICH: Any kind of an interest in any of the masters, mothers, stampers, or tapes of those compositions written by Mr. Rosette.

Q I am not referring to compositions which may have the same titles.

A No.

THE COURT: Does that go for the matrixes, the mothers and so on? What about the rights of the compositions? You didn't ask him that.

Q Did you or Rainbo ever have or claim to have any rights in the compositions themselves?

No.

Q And I am talking about the compositions allegedly written by Mrs. Rosette.

A No.

Q Except for that thirty-day period of time that you said that the partnership was actually in existence, did you ever have any business interests with Mr. Taback, aside from the fact that Rainbo was a presser?

A No.

THE COURT: What does that mean, "aside from the fact"?

MR. RICH: Aside from the fact that Rainbo may have received a fee for pressing records for Mr. Taback.

THE COURT: You had better make it more precise.

A Would you mind rephrasing the question, please?

Q Yes.

Except for that thirty-day period of time that you were associated with Mr. Taback in the partnership,

did you have any business interests with Mr. Taback aside from the fee that Rainbo Records received from pressing records for Mr. Taback?

A No.

THE COURT: No, that's not a good question; too many "aside from his" in there.

When Rainbo Records was a partnership and Taback was in it, did you have anything whatever to do with any of those compositions that were listed in that letter, Exhibit 14?

THE WITNESS: No.

THE COURT: After Taback left and became Liberty -- after he left, what happened to Rainbo Records, or did he stay in it until when?

MR. RICH: I'm sorry, your Honor. Mr. Taback --

THE COURT: Let him answer, not you.

THE WITNESS: Taback was never part of Rainbo Records.

THE COURT: Never part of Rainbo Records?

THE WITNESS: No.

THE COURT: That's what confuses me about the question.

MR. RICH: All I meant before was that Rainbo continued to press records for Mr.Taback.

THE COURT: What does Taback have to do with it? You have the whole thing confused now.

Q When you pressed records, when Rainbo Records pressed records for Mr. Taback, for whom did it press these records?

THE COURT: You are doing it again. We haven't heard a word yet about Mr. Taback and pressing or anything, and you start in when he did --

MR. RICH: I'm sorry.

Q Did Rainbo Records Manufacturing Corporation ever press records for Mr. Taback?

A Yes, we did.

Q Whenever Rainbo Records received pressing orders from Mr. Taback --

THE COURT: Wait a minute. Take it slowly.

They pressed it for Mr. Taback under what name?

MR. RICH: That wasn't my question.

THE COURT: That wasn't your question.

THE WITNESS: Lyric Records.

THE COURT: Pressed for Taback as Lyric Records.

Was that a trade name or what, do you know?

THE WITNESS: That was his company name.

THE COURT: Company name.

When did you start doing that?

THE WITNESS: In 1960.

THE COURT: Do you know what time of year?

THE WITNESS: I think it was early to middle part of the year.

THE COURT: Do you have any records to show it?

MR. RICH: Yes, we do, your Honor.

THE WITNESS: Yes.

THE COURT: All right. Let's get the records.

Q I show you certain invoices of Rainbo Records. I ask you if these are the records that you are referring to.

A Yes, they are.

MR. RICH: Your Honor, these invoices refer to some of the records that are involved in this action and --

THE COURT: Ask a specific question.

What date in 1960 did you start pressing records for Lyric?

THE WITNESS: The billing date was June 30, 1960.

THE COURT: Does it say when you did the job?

THE WITNESS: Well, I would imagine it would have been within the month of June.

THE COURT: Within the month.

And how long? What is the last invoice that you had?

THE WITNESS: Of anything we pressed for him, not necessarily pertaining to --

THE COURT: Yes. In the first place, anything you pressed for him.

THE WITNESS: The last date we had was --

MR. RICH: I don't know that that is necessarily in chronological order.

THE WITNESS: -- September 29, 1962.

THE COURT: And that was not one of the Rosetta compositions; right?

THE WITNESS: That's correct.

THE COURT: What is the last date, if you have one, of a composition that was included in Exhibit 14, that letter that was sent to you?

THE WITNESS: The last date was August the 22nd, 1960.

THE COURT: 1960?

THE WITNESS: Yes.

Q With regard to the records that Rainbo Record Manufacturing Corporation -- and from now on I am just going to be referring to that entity as Rainbo Records, Mr. Brown -- when Rainbo Records pressed records for Mr. Taback or Lyric Records, who would supply the metal parts, mothers and stampers to make the records?

A Mr. Taback would supply all the necessary components including the labels, if I might add, the jackets or whatever was necessary to complete the order.

Q And after records were pressed for Mr. Taback, what would happen, or what did happen to the metal parts, mothers, stampers?

A He would retreat them almost upon completion of the orders.

Q What would Rainbo Records do or what did it do with the records pressed for Mr. Taback or Lyric?

A Well, sometimes we would, what they call, drop-ship, ship upon the instruction of the customer; other times he would pick up the records and take them out of the plant.

Q Did Rainbo Records also press records for other customers?

A Oh, yes.

Q Did it also press records for other customers that had a children's line?

A Oh, yes, quite a few.

Q Do you know whether or not Mr.Taback used record pressers other than Rainbo Records?

A Oh, yes, he used quite a number of record pressers.

Q Did Rainbo Records also own rights to any

children's material?

A Yes.

Yes, we have a very extensive catalog. Our entire catalog consists of possible three or four hundred children's tunes.

Q Are any of the titles of the tunes in the catalog of Rainbo Records the same titles as are contained in this May 17, 1966 letter from Mr. Couture, previously marked as Exhibit 14?

A Yes. I had looked this over before, and I would say that more than two-thirds of the titles listed here are titles that we have in our catalog.

Q And the catalog you just referred to is owned by whom?

A Rainbo Records.

THE COURT: Who owns Rainbo now?

THE WITNESS: Well, the entire stock is owned by my wife and I.

Q Did Mr. Taback release any of the songs to which Rainbo Records had title, on either Carousel or Playtime label?

A Yes.

THE COURT: I don't follow that involved question.

Q What labels, record labels, did Lyric Records use?

A They used -- the ones we were familiar with were Carousel, Playtime, RKO, Counterpoint, Esoteric, and others.

THE COURT: Let me get something here.

You say you have two-thirds of the compositions which are in Exhibit 14 in your present catalog.

THE WITNESS: The titles of.

MR. RICH: The titles, not the compositions.

THE COURT: Are any of those titles of compositions that appear in Exhibit 14 as authored by Mrs. Rosetta?

THE WITNESS: What is it? I don't know what the exhibit number is.

THE COURT: That's that letter that we showed you.

THE WITNESS: Are any of those listed in their exhibit --

THE COURT: You have the similarity of titles between the titles in that letter and the titles in your catalog.

THE WITNESS: That's right.

THE COURT: That goes for titles.

Where did you get the compositions that go with the titles in your catalog?

THE WITNESS: We have purchased them, oh, I'd say, over a period of fifteen years, or eighteen years.

We owned the titles to the Hollywood Record Guild, the Record Guild of America; we had a catalog from the Sons of the Pioneers, and we recorded quite a few of our own kiddy records.

THE COURT: But, taking a look at these titles -- take any one of them just at random where you have a similar title --

THE WITNESS: I can run through them, if you like.

THE COURT: Run though them.

-- tell me where did you get the composition that goes with the title?

THE WITNESS: These came out of our own catalog. The names I mention come out of our own catalog.

MR. RICH: Your Honor, so there is no misunderstanding, there is no claim by Mr. Brown that any of the songs in his catalog are Mrs. Rosette's compositions.

THE COURT: I am trying to find that out.

What do you claim; he is denying it?

MR. RICH: Yes. I saw we deny it. We don't claim that.

THE COURT: Leave him alone. He does better by himself.

Where did you get the music and the words for each of the ones that are identical in title?

THE WITNESS: They had been purchased by Rainbo Records over a period of years for use in promotions and they are in our possession and are used as sales aids for our customers or for ourselves, and I can read the following --

THE COURT: I want to find out further, do you have the copyright for the titles that you say you have in your catalog?

THE WITNESS: We have assignments from the Hollywood Record Guild; we have assignments from the Record Guild of America. Almost all that material is in public domain. We have assignments from a series of western records that were released by Jimmy -- I couldn't remember it, I just rad it -- Jimmy Scribner Radio Show. We have all the copyrights and assignments on that; there were about sixty, eighty titles in that. We have an outright purchase of material and assignments from the Hollywood Record Guild, and we have a number of material that we recorded ourselves that we never bothered copyrighting because they were children's material.

THE COURT: But in those cases where you had an assignment of copyright, have you had some assignments of copyright or just licenses?

THE WITNESS: Just licenses to use the material.

THE COURT: Was there any representation as to the authorship of the compositions in those papers that you received?

THE WITNESS: In the Jimmy Scribner there was, with reference to some arrangements, but in the other material, they were just either outright purchased or assigned for complete and total use.

THE COURT: You don't know who the author is; is that right?

THE WITNESS: In may cases.

THE COURT: In the titles in your catalog?

THE WITNESS: Yes, we do not know.

Q Of the songs in your catalog, Mr. Brown, are any of those songs songs written or adapted by Mrs. Rosette?

A No, they are not.

THE COURT: How would he know if he doesn't know? He just answered my question he doesn't know who the authors are. How does he know they aren't?

Q Are you familiar with Mrs. Rosette's compositions?

A Yes.

Q Are you familiar with the songs in the Rainbo Record catalog?

A Yes.

Q Are the compositions in the Rainbo Record catalog

the same-sounding compositions as Mrs. Rosette's compositions?

A Would you mind rephrasing that?

Q In other words, are they the same arrangements --

THE COURT: No, wait a minute.

Q -- same arrangements made from the same tapes?

THE COURT: Start with a preliminary question. Have you heard any records of compositions by Mrs. Rosette?

THE WITNESS: Yes.

THE COURT: Which records did you hear?

THE WITNESS: Most of the catalog.

THE COURT: Whose catalog?

THE WITNESS: Most of Rosette's catalog.

THE COURT: Where did you get that catalog?

THE WITNESS: I picked up some records just prior to coming down. I managed to pick up three or four of her records.

THE COURT: Three or four only?

THE WITNESS: Well, that contained about, I would say, thirty or forty of her songs, and I can identify the kind of signature, as we call it, or identification or quality that she had that were totally different from any of the material we had.

THE COURT: Do you have those records here?

THE WITNESS: I have -- we didn't take them.

MR. RICH: We had them here yesterday, your Honor. I had the long-playing album of Junior Records here which contains many compositions.

THE WITNESS: Treasury Record.

MR. RICH: Treasury Records, which is the Junior catalog. I have that back in the office.

THE COURT: Well, the point is, I thought if you had them and played them for Mrs. Rosette, she might concede that they are not hers, and that will solve a lot of problems, or she might say they are, I don't know.

MR. RICH: I think you misunderstood me. The phonograph record that I have back in my office is Mrs. Rosette's phonograph -- a phonograph record containing her songs.

THE COURT: If she sees the records she will know which compositions they are, and then where are your records that have the same titles?

MR. RICH: I believe that in the testimony Mrs. Rosette indicated that some of the titles that are contained on the Playtime and Carousel Records may be similar to hers but are not hers, and therefore she has identified, in a kind of reverse way, that records contained

in Carousel and Playtime do not belong to her.

THE COURT: She has said that they do belong to her, but that the title was somewhat changed. But then, when she listened to the composition, as I understood it, it was her composition.

MR. RICH: For example, I asked specifically about one record that was marked in evidence which may have contained -- I don't know --

THE WITNESS: I recall --

MR. RICH: Right here. I think it was A Mother Goose Party, I think --

THE COURT: Mother Goose forget about. That's a separate item.

MR. RICH: Not the song, the name of the album.

THE COURT: I understand. Mother Goose Party is quite separate because it was a later addition to the whole thing. We are talking about the earlier bunch of songs that she made.

MR. RICH: I am not talking about the song, Mother Goose, which was the subject of a good deal of examination this morning. Each record has a different title. There is A Mother Goose Party, Alice in Wonderland, Sleepy Time Songs, and so on.

I believe I asked about the songs written or

A Yes.

adapted by Mrs. Rosette to which she has copyrights contained in this album. This album contains perhaps fifteen or twenty songs, and she said that the only songs that she had in here of hers were two.

Now, what the Court will take notice of, and I think Mrs. Rosette had testified, that there are many titles of these children's songs that are in the public domain, that are owned by people.that have been around and published and put into records by maybe fifty, one hundred, two hundred record companies.

Mrs. Rosette is only making claim with regard to those songs with the same titles that she adapted. In other words, there are numerous Oats, Peas, Beans and Barley Grow.

THE COURT: She claims she created an adaptation of certain songs.

Now, the question is, the songs first that were in Carousel and Playtime are put to one side.

The new development now that the witness says that he owns the Rainbo Records and that Rainbo Records also, aside from being a presser, is a producer of records.

MR. RICH: Not a producer.

THE WITNESS: Not a producer of records.

THE COURT: Just a presser?

THE WITNESS: Just a presser.

THE COURT: What do you mean by your catalog, then?

THE WITNESS: Well, our catalog is -- I would like to explain something.

Prior to going into the regular pressing business we developed a means of -- I don't know if this is relevant or not.

THE COURT: It's relevant.

THE WITNESS: We developed a means of making a thin plastic record or a paper-coated plastic record, upon which was photographic material or printing material, and over which you could press a record, and we, in the middle fifties, we developed this process and, for example, we made about ten to thirty million of these box-top records for Wheaties in which we had to use a lot of children's material.

It was during that time that we began to acquire this kind of music, and then, subsequent to that and after that, we had many department store promotions and birthday promotions, with products that involved or included the little plastic or a picture record, and then --

THE COURT: Do you say that your catalog, the Rainbo catalog, does not have any 45s or 78s in it? Is

that what you are indicating?

THE WITNESS: Well, generally speaking, the 45 and the 78 is only the speed upon which you record any given amount of music.

THE COURT: Let's say 7-inch record.

THE WITNESS: We do not produce any records, your Honor.

THE COURT: What is the catalog for? What do you buy from your catalog?

THE WITNESS: Initially, if I may make this statement, we have furnished material to people in the record business who are producing kiddy records. We let them use our material so we could have the pressing. It might be the difference of competition where we normally would not get a customer except for the fact that we had material, that we say, "Hey, you can use this material," and with Taback, initially, how we met, the first five Playtime records that he had consisted solely of our material. Playtime Nos. 101 through 105 was totally our material.

THE COURT: No, are you saying that none of this material which you sort of make available to producers, in order to get the pressing business, are compositions by Mrs. Rosette?

THE WITNESS: That is correct.

THE COURT: And how do you know that?

THE WITNESS: Well, I know it by identification, and I know it from where we received these records, and after having listened to these records I am positive that none of her material is any part of our catalog.

MR. RICH: Your Honor, so that there is no confusion, Mrs. Rosette's copyrights don't give her the rights, say, in every recording of a Pinocchio, or --

THE COURT: Of course not.

MR. RICH: It's only her arrangement she is claiming here.

THE COURT: I call them compositions. We all know what that means.

THE WITNESS: I don't know if I brought it. Yes, I did. Do you think that's relevant?

MR. RICH: I don't know.

THE WITNESS: It shows different titles.

Q I show you one of the record albums which comprised Exhibit 11, which is a Playtime 106, which is called Mother Goose Land with Wynk'n, Blynk'n and Nod.

On the reverse side of the jacket there is different Playtime albums, Playtime 10k, 102, 103, 104 and 105 and thereafter.

Is any of your material on any of those Playtime albums?

A I would have to assume that -- yes, there is definitely on -- certainly on 101 through 105.

Q When Rainbo pressed records for Mr. Baback, for the Lyric Records, do you know what recordings, what songs, rather, were contained on the various records?

A No.

Q Were you entitled to any royalty on records sold by Mr. Taback or Lyric Records containing your compositions?

A No.

Q Did you or Rainbo Reocrds ever have any interest in the Playtime or Carousel labels?

A No.

Q Did you or Rainbo ever derive any income or remuneration from the sale of Playtime or Carousel records?

A No.

Q During what period of time did Rainbo Records press Playtime or Carousel records for Mr. Taback? I am only referring to the Playtime or Carousel records.

A During the middle part of 1960.

MR. RICH: Your Honor, I call to the Court's attention at this time, and I state this as an attorney, that in preparing for this case, I had obtained these

invoices from the attorney who represented Mr. Taback in those prior years. These are all original invoices which would not be kept by Rainbo.

Let me ask a question:

Q When Rainbo sends out an invoice to a customer, does it send out the original invoice or a copy of the invoice?

A The original invoice.

THE COURT: Let me ask you this: Do you have any independent record to show when you last pressed records for Mr. Taback as Carousel or Playtime, records of your own?

THE WITNESS: No, no, we do not have any records of our own.

THE COURT: How do you know that that's the last invoice?

THE WITNESS: Well, after viewing this folder, which I hadn't seen in twelve years, I began to recollect the series of events that made me positive that this was all that we had pressed for them.

THE COURT: Can you tell us some of those events so we can test your memory?

THE WITNESS: Yes, all right.

As I said, there was the meeting of the Playtime

and Carousel Record creation. Following that was an attempt at a partnership. Not having succeeded, we still continued to press for Mr. Taback. He objected to our prices, claiming that children's records had to be pressed for much less than we were doing it. We couldn't do it.

And to compensate for not having us press the children's records, he let us press other merchandise at a higher price, and then that continued on until, again I would say, the latter part of '61 or '62, at which time he kept reducing the price, you know, more and more, until we finally decided we just couldn't do any more business with him.

THE COURT: What makes you think that the middle of 1960 -- you just mentioned '72 -- the middle of 1960 was the last time that you pressed for Playtime and Carousel?

THE WITNESS: Because we couldn't afford to press children's records for him at our price.

THE COURT: You say you kept on after that, non-children's records?

THE WITNESS: That's correct.

THE COURT: And that's your clear recollection?

THE WITNESS: Yes, very clear.

Q Mr. Brown, did Rainbo Records have any policy with regard to keeping its business records, indicating those records it pressed for its customers, for any length of time?

A Yes, we generally keep our records for around four to five years, four to six years, depending on the activity of the account.

Q The business records for pressings done in 1960, '61, '62, in those years, where did Rainbo keep those business records?

A Well, at that time -- this might be a little circumspect, but at that time, in 1963, we moved to another location, and those inactive or obsolete records and jackets and other components were kept, we will owned the property, were kept at the original location in Lawndale after we moved to the Hollywood location in 1963.

Q Are those business records available that were kept at that warehouse for those years?

A No, they are not.

Q Can you tell the Court why not?

A In '67, 1967, we were having what they called a parapet repaired on the building, and the people who were repairing it left an opening around the building and we had one of the most severe rain storms and cloud bursts that

lasted almost ten days and completely inundated the entire premises, where much, much materials, jackets and clerical records and so forth, were kept, so much of that, almost everything was destroyed or lost because even later on there was a vandalization of the place because it appeared to be deserted, and we had, of course, supporting correspondence and so forth to demonstrate that.

MR. RICH: I ask that these be marked.

(Defendants' Exhibit L was marked for identification.)

Q Is that the correspondence, or copies of the correspondence, that you referred to, Mr. Brown?

A Yes.

MR. RICH: I ask that these letters be marked in evidence.

MR. COUTURE: No objection.

(Defendants' Exhibit L for identification was received in evidence.)

Q Mr. Brown, are you familiar with the signature of Mr. Taback?

A Yes.

MR. RICH: I'd like to have this marked.

(Defendants' Exhibit M was marked for identifi-

cation.)

Q I show you this document marked as Exhibit M for identification, which is an agreement of sale between Aaron Eichler and Sidney Taback and I ask you if this is Mr. Taback's signature appearing on that document.

A Yes.

MR. RICH: I ask that this document be marked in evidence.

THE COURT: Any objection?

MR. COUTURE: Yes, sir. We are going again with this document into the forbidden territory of the affirmative defenses that were not permitted to be pleaded.

THE COURT: We will exclude it on the basis on which I excluded the other material with an inconsistent chain of title or right to exploit the copyrighted material.

MR. RICH: Your Honor, I understand the exclusion on that basis, but I submit it ought to be marked in evidence for another reason, and that would be that which would go to the question of damages, which if Mr. Taback believed that he had the right to manufacture and sell these, there wasn't any wilfulness on his part.

THE COURT: He's already testified to that. The thing you didn't ask him is what conversation

he had with Mr. Taback concerning Taback's claim of right. That I would allow in generally on the mitigation of damages, if any.

MR. RICH: I am not referring to Mr. Brown's conversations. I don't even know if he had any conversation with Mr. Taback, but since Mr. Brown was doing pressing for Mr. Taback --

THE COURT: Mr. Taback said he was a presser.

MR. RICH: I saw that. I read that. He was going to take care of the pressing and the selling and so on.

THE COURT: Not take care of the pressing; he said he is a presser. It comes out on the question of whether he wasn't still a partner of Mr. Brown at that time. If he said he is a presser.

MR. RICH: I understand what it says, your Honor, but it doesn't -- it is a purchase of these various tapes and mothers and stampers and so on.

THE COURT: There is no schedule attached. I don't know what those tapes are. Nobody does. We have never heard of Wonderland up to this point.

MR. RICH: Yes, we have. Mrs. Rosette has testified that Wonderland Records was the name used by Junior Records, and it refers to the 96 songs, and I

previously asked her how many there were in the catalog and she said 96 or 98.

THE COURT: In any event, I am not going to allow it because of the lateness in attempting to file an amended answer containing new affirmative defenses in the case that was six years old at the time of the trial.

Q Mr. Brown, is Mr. Taback still living?

A No, he is not.

Q Do you know when he died?

A I think he died in 1964.

Q I show you a letter previously marked as Exhibit 14. That is a letter from Mr. Couture, dated May 17, 1966, in which he makes claim with regard to certain compositions and refers to Carousel and Playtime.

Did you answer that letter?

A Yes, I did.

Q And is this the letter, Exhibit 15, that you sent in response to Mr. Couture's letter to you?

A Yes, it is.

Q Now, I call your attention to the first paragraph of the letter that says, "This is to advise you that the Carousel and Playtime record line has been inactive for two years."

What did you intend to convey to Zissu, Marcus &

Stein by advising them of the inactivity of the Carousel and Playtime record line?

MR. COUTURE: Objection to what he intended to convey.

THE COURT: I am going to allow it because of the obvious ambiguity in the letter.

A This is my way of telling them that Sid Taback had passed away about two years ago and with his passing the Carousel and Playtime record line ceased to exist.

Q Now, in the second paragraph --

THE COURT: Before that, let me ask you: Why didn't you say outright "we had nothing to do with Playtime and Carousel"?

THE WITNESS: I don't recall, your Honor.

MR. RICH: Perhaps we can get to that in just a minute, your Honor.

Q I now refer you to the second paragraph which says, "We may reactivate the line Ed Chalpin of PPX with whom I am sure you are familiar."

Now, did the Carousel and Playtime record line also contain compositions owned by Rainbo Records?

A Yes.

Q Now, the pronoun "we" that starts the second paragraph, "we may reactivate the line," who is the "we"?

A That's Rainbo Records.

MR. COUTURE: Your Honor, I'd like to object; again not only is the witness being led, but there is nothing ambiguous about the statements there as they are. It is simply an effort to lead the witness into writing the letter again.

THE COURT: Don't lead him. He is asking him what is meant by "we." And in the context it's a proper question because he is the cross-examiner.

MR. COUTURE: The ambiguity only arises from the present denial.

THE COURT: We have an ambiguity when somebody discusses Playtime and Carousel and Rainbo and himself.

MR. COUTURE: He signs the letter "Rainbo Records" after referring to "we."

THE COURT: That's right.

Who did you mean by "we"?

THE WITNESS: Rainbo Records.

Q Now, the line that you refer to in the second paragraph, what line are you referring to here?

A Our catalog, Rainbo's catalog.

Q And that's the catalog that you previously testified to, was contained on the Carousel and Playtime records?

A Yes.

Did you -- and I believe you also testified that the titles that were contained, or that many of the titles or two-thirds of the titles contained on Exhibit 14 were also titles within the Rainbo catalog; is that correct?

A That's correct.

Q With regard to the contracts that you had concerning Rainbo's catalog, containing those compositions in Rainbo's catalog, did you have, or did Rainbo have, a hold-harmless provision?

A A hold-harmless we sort of regard generically, you know; in other words, I was talking about those items or those catalogs that we had, that we obtained, that we purchased, that we were assigned, and we had the rights, complete rights to utilize or use that catalog. And that was my point of reference.

Q And the songs in that -- many of the songs in that catalog were contained on the Carousel and Playtime records?

A Yes. Yes.

Q Now, why did you want to see the contracts that you referred to in this third paragraph? You asked Zissu, Marcus & Stein that "we would like to see your

contracts regarding the works you refer to, inasmuch as we have a hold-harmless agreement when we purchased the entire catalog." Why is it you wanted to see his --

A I wanted to find out why we would claim they are our material, that the titles listed thereon did not belong us and/or did not have the right to use them, and I wanted to see what evidence they had forbidding us to use those titles.

Q At the time you wrote this letter, which is June 16, 1966, had you ever heard the recordings of Mrs. Rosette, and which were contained on Carousel Albums Nos. C-806, 807, 808 and 812, or in Playtime records from 106 to 112, inclusive, and 116, '17 and '18?

A Will you ask me the first part of the question, please?

Q I am sorry.

At the time that you wrote your letter to Zissu, Marcus & Stein, that's the June 16, 1966 letter, had you heard the compositions referred to in Mr. Couture's letter to you which are contained on the Carousel and Playtime albums that are mentioned in his letter which was marked as an exhibit, Exhibit 14?

A Had I heard them on those records?

Q Yes.

A No, I did not.

THE COURT: You mean you press them without listening to them?

THE WITNESS: We never pressed these.

THE COURT: The Playtime?

THE WITNESS: He asks me, he asked me about these titles here.

THE COURT: Let's get that Exhibit 11 -- isn't it? -- with the thirteen records. Let me look at that.

(Records handed to the Court)

THE COURT: Let me show you the first one, Alice in Wonderland, Exhibit 11-A in evidence. Apparently it's a Playtime record.

Did you press this record, Mr. Brown?

THE WITNESS: I couldn't tell by looking, but by the number I would say I did not press it.

THE COURT: The number, what do you mean by that?

THE WITNESS: Becase we only pressed up to PT-106. We didn't press anythinb beyond that.

THE COURT: You only pressed up to PT-106? How do you know that?

THE WITNESS: By my recollection and by these invoices.

THE COURT: And what about the Carousel? What was your highest number?

THE WITNESS: We did not press any Carousel records.

THE COURT: You pressed no Carousel records. Did it include 106 or did it not include PT-106?

THE WITNESS: You mean did this list include 106?

THE COURT: Did it end with 105?

THE WITNESS: It included 106.

THE COURT: All right. Let me show you PT-106, Mother Goose Land.

Did you press that record?

THE WITNESS: There is no way of knowing if I pressed this particular record.

THE COURT: Except that it's PT-106?

THE WITNESS: That's right.

THE COURT: So you probably did?

THE WITNESS: I couldn't say. There is no way that I would know.

THE COURT: You mean there may have been several presses who did PT-106?

THE WITNESS: Yes, of course. They are the --

the only marking is PT-106. There is no way of telling.

THE COURT: And you are certain that you pressed none of the Carousel records?

THE WITNESS: Yes.

It's a good record, whoever pressed it. It just has a few little pimples.

THE COURT: Do you recognize your own workmanship?

THE WITNESS: I personally have never pressed a record, your Honor.

Q Prior to the time that you wrote the letter of June 16, 1966, did you know whose compositions these were that were contained in -- which were listed in the May 17, 1966 letter?

A No, I did not.

MR. RICH: I have no other questions.

THE COURT: Cross-examination?

MR. COUTURE: May I have a five-minute recess, your Honor, or could we break for lunch now?

THE COURT: If you want to, we can break for lunch.

Do you have any more witnesses, Mr. Rich?

MR. RICH: No, I do not.

THE COURT: Are you going to rest after this?

MR. RICH: Yes.

THE COURT: We can get through this afternoon. It's now twenty-five minutes to 1:00. Let's come back at ten minutes to 2:00.

There is something I asked you to do during lunch time.

MR.COUTURE: To compare our charts at lunch time.

THE COURT: Yes. Then let me know whether you have any objection to the other fellow's.

(Luncheon recess)

A I can't, not recently.

AFTERNOON SESSION

1:50 P.M.

J A C K G. B R O W N, resumed.

THE COURT: Cross-examination.

MR. COUTURE: We prepared the charts and find one error.

THE COURT: Do you want to correct it on mine? Do you both agree on it?

MR. COUTURE: Yes.

MR. RICH: Also on my chart I had to add on one date to conform it.

Your Honor, there is a difference on one of these compositions which we could both explain. With regard to Mother Goose Party, I had the date of copyright as being January 2, 1951, and Mr. Couture had it as being December 11, 1950. I don't know that it makes a difference but the difference in the two dates is that I took the dates of receipt in the Copyright Office as January 2, 1951, and Mr. Couture took the date first published in the United States as December 11th.

THE COURT: That is the proper copyright date?

MR. RICH: Yes.

THE COURT: It is Mother Goose, it is not Mother Goose Party, is it?

(Plaintiff's Exhibit 19 received in evidence.)

MR. RICH: Mother Goose Party.

THE COURT: I thought that was the compendium of the lead song.

MR. COUTURE: Sometimes.

THE COURT: The copyright of the album?

MR. COUTURE: No, only of the individual composition in the album.

MR. RICH: Yes, it just happened the name of the album is the name of that song.

THE COURT: All right, cross-examination.

CROSS-EXAMINATION

BY MR. COUTURE:

Q Before your move of your business premises from Lawndale to Los Pamas Boulevard, di you share the office space with anybody, office or business space?

A I don't think I understand you. Did we share the office space --

THE COURT: When you were in Lawndale.

THE WITNESS: You mean anybody other than Rainbo?

THE COURT: Yes.

THE WITNESS: No, we didn't.

Q Did you at any other time share office space with anyone?

A Not to my recollection.

THE COURT: After you stopped being partners with Taback, did you ever share office space with him?

THE WITNESS: No.

Q Do you recall what your telephone number was at that Lawndale address?

A I don't recall.

Q Would OR8-3489 sound familiar?

A It could. The OR would be that exchange in that area, but I don't recall.

Q When again was the date you moved from Lawndale to Las Pamas?

A It covered a period of about, oh, I would say eight months, ten months. We had to set up one plant in operation before we closed the other plant and both plants ran simultaneously for about four or five months.

Q Have you ever heard of an organization known as Lyric Playtime Records?

A No.

Q Have you ever heard of an organization known as Playtime Lyric Records?

A No, I haven't.

Q Would it refresh your recollection if I told you that they were listed in the Los Angeles telephone book as being at your premises with the same telephone number?

than those listed there. I am referring to Plaintiff's

THE COURT: As being what?

MR. COUTURE: At the same premises as Rainbo Records.

THE COURT: The same telephone number as Rainbo Records.

Q Same telephone number, same premises?

A I have no recollection of that.

THE COURT: Did Playtime and Carousel ever have the same telephone number as Rainbo?

THE WITNESS: Not to my recollection.

Q Did you ever receive mail for Playtime Records or Playtime Lyric at that address, at your office address?

A Yes, we would occasionally see mail there, yes.

Q Did you open that mail?

A No, not usually.

Q Would you ever open it?

A Would I ever open it?

Q Yes.

A I don't believe I would.

Q Why wouldn't you open it?

A Because it wasn't addressed to Rainbo Records.

Q The letter to you from me, Plaintiff's Exhibit 14, was a certified letter addressed to Playtime Records, Inc. You accepted that letter and signed for it, did you not?

A I don't recall.

MR. COUTURE: Please mark this as an exhibit.

(Plaintiff's Exhibit 19 marked for identification.)

Q I show you a Post Office return receipt dated May 19, 1966, and ask if that is your signature.

A It looks like my signature. It looks like it, but I don't know if it is. Upon looking at it, I don't know if it is.

Q Is that your handwriting above that line, Playtime Records?

A That's what doesn't look like my handwriting.

Q How about the signature?

A It sort of looks like mine.

Q Do you remember receiving this letter?

A No, I don't.

Q Do you remember opening it?

A No.

Q Do you remember reading it?

A I read it, yes.

THE COURT: Do you remember answering it?

THE WITNESS: Of course, yes.

THE COURT: How did you get it?

THE WITNESS: Usually my secretary opens up the mail for us.

Q Would she sign your name on the receipt?

A She sometimes does that, yes.

Q With your authorization?

A Yes.

Q Did she have specific authorization to open any specific mail?

A She doesn't have, but generally as a matter of fact she has opened mail for us.

Q Did she open Playtime Records' mail?

A Well, I don't know.

Q Well, who do you think opened this letter?

A Well, if it came at our address, it is conceivable that she may have opened it.

THE COURT: You answered in Exhibit 14 for Rainbo Records. If it had been addressed to Playtime, why didn't you answer it as Brown?

THE WITNESS: It never occurred to me. I thought the matter was a Rainbo matter.

THE COURT: Why?

THE WITNESS: It never occurred to me it would be anything else.

THE COURT: Why should it be a Rainbo matter if there was a charge made against Playtime and Carousel?

THE WITNESS: I don't know. I really can't remember

A It was the thought of producing and selling

why. I only know that there was some information concerning the use of certain materials and I thought it had reference to our material, to Rainbo's material, because that is the only material that I have anything to say about.

THE COURT: Let me see that Exhibit 14 again, please.

Was it because you recognized the title as being in your catalog, is that why you answered for Rainbo?

THE WITNESS: Possibly. Possibly so.

Q May I ask you just for the record again, would you state whether or not that is your signature, if you can?

THE COURT: We are now back to Plaintiff's Exhibit 19 for identification.

MR. COUTURE: Sorry.

A Yes. I --

Q Let me show you Plaintiff's Exhibit 15 which is your letter to my law firm dated June 16, 1966, and ask you to compare the two signatures.

THE COURT: First ask him whether it is his signature on 15.

MR. COUTURE: Sorry.

Q Is that your signature on Exhibit 15?

A Yes, that is mine. That is what makes me think it is not mine because -- because I don't --

THE COURT: What difference does it make? He answered the letter.

MR. COUTURE: Yes.

Q Have you received any other correspondence addressed to Playtime Records?

A I don't think so.

Q In or about this time?

A I don't recall.

THE COURT: After Mr. Taback died who took care of the correspondence for Playtime Records?

THE WITNESS: Occasionally we got a trickle of letters coming in complaining about a record, the wrong record, wrong jacket, that sort of thing.

THE COURT: Those complaints were usually to the wrong address, is that right?

THE WITNESS: They were generally forwarded to Lawndale, a small town, we were the only company there and any time it was addressed there it came to us.

Q You were the only record company in Lawndale?

A Yes.

Q I notice that the address given for all of these records, Playtime Records and Carousel Records both is Lawndale, California. These are all the records in evidence, Exhibit 11. Does that change your statement that you were

A Yes, now we do.

the only record company in Lawndale?

A To my knowledge we were the only record company in Lawndale.

Q Could Playtime Records have been in Lawndale?

A Well, I think they had a Post Office box number in Lawndale.

Q Well, if that is the case how did it come that mail would come to you addressed to Playtime Records, they were also in Lawndale?

A That was quite a few years after I left Lawndale.

Q This letter was addressed to Playtime Records in Las Pamas, your present address.

THE COURT: What kind of building was that, a large building?

THE WITNESS: No, single building.

THE COURT: Your own building was a single building?

THE WITNESS: Yes.

Q In 1966, 1965, 1964, 1963 and 1962 did you share office space with any other firm? Does the name Playtime Lyric Record in connection with your Los Pamas address mean anything to you?

A No, sir.

Q Would it mean anything to you if I told you it had the same phone number you still have?

A Los Pamas?

Q Yes.

A I am surprised.

Q Had you ever received any mail from these people, Playtime Lyric Records?

A No, not to my knowledge.

MR. COUTURE: I would like to offer in evidence 12 sheets of paper being photocopies of various pages of the Los Angeles telephone directory, central district.

THE COURT: What dates?

MR. COUTURE: Two pages each for the years 1962 through 1966. One page will be the P's and the L.

THE COURT: Any objection?

MR. RICH: Your Honor, these appear to be copies of telephone books, or pages of telephone books and there are affidavits on the bottom of the pages by Mr. Mosher who says that he is an attorney admitted to practice in the State of New York and he compared these pages with the Los Angeles telephone directory and he said they were true.

THE COURT: Do you object or don't you? I don't understand.

MR. RICH: I don't want to make a futile objection. I don't know that this is the best evidence of it, but if the attorney says he compared the two of them I would be willing

to say that these were acceptable.

THE COURT: Received in evidence.

You went through five minutes for no purpose.

MR. RICH: I'm sorry.

Q On the addresses again, Mr. Brown --

(Plaintiff's Exhibit 20 received in evidence.)

Q -- did you ever receive mail at Box 125 Lawndale, California, Post Office Box 125?

A Did Rainbo Records ever receive it?

Q Or you personally.

A I don't recall.

Q Did you ever have a listing of that box number?

A I don't recall.

Q Did you ever have a Post Office box?

A I think we had a Post Office box in Lawndale.

Q In Lawndale?

A Yes, I think so.

Q This was after you moved?

A I can't recall.

Q What was the purpose of the box?

THE COURT: What was what?

MR. COUTURE: The purpose of the box. Mr. Brown just testified that they had maintained a Post Office box, he believes, in Lawndale and I am trying to find out the

purpose.

A I don't know unless there was a period of time in which the mail wasn't delivered to us as quickly as it used to. I don't recall.

Q Do you have a Post Office box now?

A Yes, we do.

Q Where is that?

A In Hollywood.

Q Do you have one in Lawndale now?

A No.

Q Was Mr. Taback or any of his organizations ever known as Playtime Records?

A I don't know -- what he was known as, I have no knowledge.

Q To your knowledge, was it a trade name?

A I don't know.

Q When you pressed, as you say, records for Mr. Taback how were they invoiced, to whom?

A Lyric Records.

Q And to your knowledge is there, or has there ever been a connection between the names Lyric Records and Playtime Lyric Records or Lyric Playtime Records?

A I don't remember.

Q You never heard of that?

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A I am familiar with all the three names, but put in unison, together, I really can't recall.

Q Did you ever receive phone calls at your office for Playtime Lyric Records?

A I can't recall that either.

Q Would you recall if you had?

A No.

Q You testified, Mr. Brown, that -- correct me if I am characterizing you incorrectly- you testified that you have as you say in your catalog some two-thirds of the titles similar to those which were mentioned in my letter to you, Plaintiff's Exhibit 14, in which I listed Mr. Rosette's composition. Would you state which are those two-thirds for me? I show you Plaintiff's Exhibit 14.

A From this?

Q Please, yes.

A The Pied Piper, Pussy Cat Pussy Cat. We had a Funny Easter Bunny. Mary Had A Little Lamb, Ding Dong Bell, Wynk'n, Blynk'n And Nod, Old Mother Hubbard. We have a Mother Goose Medley.

Q Would you confuse that with Mother Goose Party?

A I --

Q Did you confuse it?

A Mother Goose -- that covers a great number of songs.

Fiddle Dee Dee, Goosey Goosey Gander, Little Red Hen, Where Has My Little Dog Gone, Alice In Wonderland, Old King Cole, Jack In The Beanstalk. I may have others, but I am not that certain of the -- I mean listed here.

Q That comes to 16 by my count out of the 33.

A Funny Bunny, did you count that?

Q Yes.

A And Pinocchio.

Q In what form do these performances of these compositions reside at the moment, that is, do you have tapes of these, did you have metals or masters?

A Tapes.

Q Tapes from which you manufactured masters?

A From which the customer usually manufactures.

Q And then he delivers the master to you and you press for him?

A Yes.

Q Have you done that recently with any of these compositions you mentioned?

A Well, we have had customers that have had some of these titles.

Q Who were they?

A Recently?

Q Oh, let's say in 1966, '65, if you can recall.

A I can't, not recently.

Q Were you doing much children's record pressing in those days?

A Yes, quite a bit, a great deal.

Q Do you have any list with you of the so-called catalog address?

A Of the catalog?

Q Yes.

A No.

Q You had before a blue seven-inch record jacket. Did that contain a list of catalogs?

A Some.

Q May I see that?

THE COURT: Is it coming up now?

MR. COUTURE: It is a record jacket Mr. Brown was considering earlier.

Mark this for identification, please.

(Plaintiff's Exhibit 21 marked for identification.)

MR. COUTURE: Before I forget, I would like to offer in evidence the return receipt on the letter of May 16th.

THE COURT: Any objection?

MR. RICH: No.

THE COURT: Received.

(Plaintiff's Exhibit 19 received in evidence.)

Q Referring to Plaintiff's Exhibit 21 for identification, I see listed on the back of this seven-inch record jacket certain songs with titles similar to the ones we discussed.

A Yes.

Q Are you familiar with those compositions?

A I am familiar with the title.

Q Have you heard the songs?

A Quite a few.

Q How recently have you heard Mrs. Rosette's composition?

A I would say the past 90 days.

Q Where did you acquire the records of her composition?

A I just ran into them.

Q Where, in the store?

A I don't recall.

Q You found them in your briefcase?

A No. I just went through many records that I had in the warehouse or that may have been in somebody else's possession.

THE COURT: How did you know they were her records?

THE WITNESS: Treasure Records and her name was

on the back.

THE COURT: How did you know she was Treasury?

THE WITNESS: It said Marion Rosette on the back. The background information on those records contained her history and her activity, you know.

Q You obtained it within the last 90 days and you can't remember, where, how or from whom?

A I can't.

THE COURT: Did you ever copy somebody else's records?

THE WITNESS: No. Did we have personally reproduce somebody else?

THE COURT: I mean your company, Rainbo.

THE WITNESS: No.

MR. RICH: Your Honor, if need be, I have that record Mr. Brown is speaking about in my office. It is Treasure Records not Treasury.

THE COURT: No, but the implication in the cross-examination is he didn't by it in the last 90 days, that he had it in his warehouse all the time and that is what he copied from. I suppose that is what he is trying to bring out. It is legitimate cross-examination.

Q When you obtained this Treasure Record that contains some of the compositions, were any of those compositions other

than those listed there, I am referring to Plaintiff's Exhibit 21?

THE COURT: Read that.

(Read.)

Q I will rephrase it. Referring to Plaintiff's Exhibit 21, Mr. Brown, there are listed on the back several titles being individual phonograph records containing certain compositions. Some of those compositions you testified are those in your catalog?

A That's correct.

Q And these listed here are those compositions, is that correct?

A That's right.

Q Now, in the last 90 days you testified that you have listened to some of Mrs. Rosette's compositions on the Treasure Record that you obtained. Were any of the compositions in the Treasure Record with the same title as those listed here, Exhibit 21?

A Can you ask me the question again?

Q You can look at Exhibit 21 and look at the titles and see whether those are any ones with the Treasure Records?

A I don't recall now. I have no way of recalling what's on the record.

Q What I am getting at, have you listened to Mrs.

Rosette's records and listened to your records and have you compared them?

A Well, I could tell, as I mentioned before, I could tell her records, I believe, because unlike most children's records they are very well produced with a great deal of thought and consideration. Most of these records --

Q Excuse me?

A Yes.

Q We are not concerned with the production.

A I am talking about identification.

Q We are talking about the song as written, the copyright.

A That is how I can identify, the quality of the recording, the arrangement of the recording and the instrumentation of the recording. That is how I can identify the record. I know, I don't think we have, with all due respect with what we have, I don't think we have anything in our line that has the quality that she has and it is very easy to identify.

Q You testified on direct examination that you were associated in a partnership called Lyric Records with Mr. Taback in 1960. Is that correct?

A Yes.

THE COURT: And you were never a partner in

Playtime or Carousel or any company that ran them?

A That's correct.

Q Did you invest any money in that partnership?

A Initially we put up some money.

Q How much?

A Maybe a couple of hundred dollars.

Q You say we. Who else put up money?

A Selig Smith.

Q Did Mr. Taback put up money?

A I don't know. I don't think so, because shortly thereafter we took our money back.

Q How, what do you mean, withdrew it from the bank?

A I don't recall how.

Q Was there a formal dissolution?

A Yes.

Q There was an agreement between the three of you?

A I don't believe there was an agreement. There was just Mr. Smith filed for dissolution at the time that he dissolved the partnership.

Q What was the -- if you testified to this before, excuse me -- but what was the purpose of the partnership Lyric Records?

A I have testified to that.

Q What was it?

A It was the thought of producing and selling phonograph records.

Q What did Mr. Taback bring to this partnership?

A He was to have brought sales.

THE COURT: He was what?

THE WITNESS: Sales.

THE COURT: I can't hear.

THE WITNESS: Sales.

THE COURT: Sales?

THE WITNESS: Yes, he was distributing company salesman.

Q Did he have any catalog, any tapes, any masters to put into this partnership?

A Well, he said something about having--

Q Before you put your money up, what did he say?

A I don't know what he said.

MR. COUTURE: I am looking for the newspaper clipping that was in evidence.

Q Again when Mr. Taback and Mr. Smith and you formed the partnership, did Mr. Taback at any time mention to you a man named Eichler -- Aaron Eichler?

A I don't recall.

Q Were you to have any function in the partnership? Were you to be active in any aspect of it, in a business sense?

A No. My function, I think, was to be a pressing plant.

Q A pressing plant. Was there a formal contract forming the partnership?

A I don't recall.

Q When you were pressing, that is, when Rainbo Records or you were pressing records for Mr. Taback, did you supply the labels, the jackets?

A No, we didn't supply anything.

Q What was the procedure? Would you apply the label, would you pack the jacket?

A Well, part of the procedure of making the record is to have the label molded onto the record at the time the record is made and then another part of the procedure is placing it into the jacket if the customer so desires.

Q Did you print up the label?

A No.

Q Are you certain of that? You remember clearly that you didn't?

A Yes, we had no printer.

Q You never printed up labels at that time?

A No, we didn't.

Q Do you now?

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A Yes, now we do.

Q For how long have you been doing that?

A I would say about five years.

Q Did you ever deliver the records for Mr. Taback, drop ship?

A Oh, yes.

Q Directly?

A Yes.

Q Who dealt with Mr. Taback in the course of your pressing relations with him?

A Well, he was -- almost everybody in the plant I would say.

Q Well, what I mean is who would determine the price? You spoke earlier of having a falling out with him with regard to children's records?

A I would.

Q If Mr. Taback wanted you to do some pressing and would talk to you about the price of the pressing, would he call you?

A Yes.

Q If he had complaints, would he speak to you?

A About the price?

Q Yes. About the service.

A I suppose. He was a very forward man and he would

speak to almost everybody.

Q Did he ever discuss the quality of the line?

A No.

Q Or just general business aspects?

A I don't think so.

Q You stated that the material in Playtime Records numbers 101 through 105 is material that you furnished Mr. Taback; is that correct?

A Yes.

Q From your catalog?

A Yes.

Q Do you remember that clearly?

A Yes, quite clearly because that was the only material that was available at the time.

Q Did you use something to refresh your recollection about that?

A When I saw the invoices.

Q When did you see them?

A When did I see them? Just before I came, I would say within the past several weeks.

Q Until then you wouldn't have been able to recall that you furnished all that material for those records, is that correct?

A I don't think I could, that's correct.

Q In the course of your business now and in '66 was it about the same or '62 or '60, whenever, would you ever personally check on the quality of the pressing that is done for a customer?

A Would I ever check on the quality of the records we pressed? Yes.

Q You listened to them?

A Sometimes.

Q Did you listen to Mr. Taback?

A I don't recall.

Q Would you have in the ordinary course listened to Mr. Taback?

A Not normally.

Q Not his?

A No, not normally.

Q But you listened to others?

A If there was some question of making a decision they would sometimes come to me, if it is good enough to continue with or if it is bad enough to start, but we have testers and inspectors that do these things.

Q Did you ever do pressing for a record company in which you received something other than a fee, for example, a royalty on a record?

A Did we ever receive other than --

Q Rather than a flat fee, did you ever receive remuneration in the form of a royalty, that is, related to the number of records sold?

A Yes, I have, I received royalties, I received royalties for some material that -- for some patents, I received royalties for --

Q Excuse me, I meant for record pressing, instead of a flat fee for gross records pressed, did you ever receive a royalty?

MR. RICH: Objection. I don't know what a flat fee means.

THE COURT: Instead of getting paid a certain number of times for pressing, did you ever make a deal like a joint venture with a producer and you get a share of the profits or a royalty?

THE WITNESS: I don't recall.

THE COURT: You don't recall; all right, that is the answer.

Q In 1963 when you moved from Lawndale you stated that you left behind you business records, is that correct?

A Yes.

Q And it is those business records that were lost in the flood?

A Yes.

Q The water damage?

A Yes.

Q And in those business records would there be anything that might be able to help you to tell us the extent of your pressing for Taback and the dates and so forth, the actual invoice copies; is that correct?

A Yes.

Q That is what you lost. Did you keep such records after 1963 when you were at Los Pamas?

A Did we keep them after '63?

Q Yes, do you keep them now or were you keeping them after?

A As I mentioned before, we keep them a certain period of time and then we dispose of them. As a matter of fact, yes, we keep records.

Q Do you recall that your deposition was taken on August 22, 1969, in Beverly Hills, California, by an attorney named Mitchel Reinis?

A Yes.

Q I am going to read you some questions and answers and ask if those are the questions and those were your answers at that time.

THE COURT: What are you reading from?

MR. COUTURE: From the deposition of Mr. Brown

taken August 22, 1969.

THE COURT: In this case?

MR. COUTURE: In this case.

MR. RICH: May I ask if you have an extra copy of the transcript?

MR. COUTURE: I don't have an extra copy. In fact, your Honor, I don't have the signed ribbon copy because the ribbon copy is still in the possession of defendants' counsel. It has never been delivered to me.

THE COURT: You may read from it. You are not objecting?

MR. RICH: I have no objection. Can I get an extra copy of the transcript from which he reads the questions and answers so I can follow along?

THE COURT: You want it?

MR. RICH: I have it.

THE COURT: The witness doesn't need an extra copy.

MR. RICH: What are you reading?

MR. COUTURE: Page 30.

"Q Do you have any records and/or records or invoices or bills in your office or in your possession any place that would indicate the record numbers of the records that were pressed for Mr. Taback?

"A I do not.

"Q So there is no way of knowing the records that you pressed for Mr. Taback, is that correct?

"A I don't -- I don't believe there is.

"Q Is there a method of determining the quantity of records that you pressed for Mr. Taback and the dates that you pressed them?

"A No, we don't keep records that long.

"Q When you did business with Mr. Taback in 1960 or 1961 did you yourself print up the labels and affix them to the records?

"A You have asked me two questions.

"Q Can you give me two answers?

"A We didn't print up the labels but in the process of making up the record they are molded into the record."

THE COURT: Did you testify to that?

THE WITNESS: Yes.

THE COURT: Was it true?

THE WITNESS: Yes.

Q At that time were you aware of the flood that had occurred at Lawndale?

A At the time of the deposition?

Q Yes.

A Sure.

Q August, 1966?

A Oh, the flood in August, '66? I'm sorry, I don't understand your question.

MR. RICH: I don't understand the question either.

THE COURT: I thought the complaint was filed in November, so how could you be having depositions in August?

MR. COUTURE: Sorry, it is August '69, your Honor.

THE COURT: You said '66.

MR. COUTURE: I'm sorry.

Q Did you know at this time that a flood had occurred in Lawndale when you answered these questions?

A I knew of the flood, yes.

Q Did you tell the attorney at the time of this flood?

MR. RICH: Objection, your Honor.

THE COURT: He can ask whether he did or didn't.

MR. RICH: If the question is asked of him, that is one thing, and I wish Mr. Couture would refer to the testimony.

MR. COUTURE: I am not speaking of the testimony.

THE COURT: He can answer that. Overruled.

A I don't recall if they asked it or not.

Q Did you tell the attorney about the water damage

to your records?

A Did I tell the attorney?

Q In 1969 at the taking of this deposition, did you tell the attorney about the water damage to your records in Lawndale?

A I don't recall. I don't believe so.

Q You stated on direct examination, I believe, that you pressed for Taback only Playtime label and not the Carousel label, is that correct?

A To the best of my recollection, I think that was so.

Q Do you recall preparing with your attorney and signing written answers to interrogatories in connection with this case, your signing took place May 7, 1969?

A I probably did. I don't know.

MR. COUTURE: Mark this for identification.

(Plaintiff's Exhibit 22 marked for identification.)

MR. COUTURE: That contains both the questions and the answers..

Q I read you Question 7A of the interrogatories:

"State whether defendant has ever used the names Playtime Records or Carousel Records as labels or marks for phonograph recordings or whether the defendant has ever used Playtime Records or Carousel Records or Co. as business

styles and set forth first date of each use and whether if use was such use discontinued.

"A Defendant has pressed and manufactured records under the label Playtime Records and Carousel. And has not used these names as its business or trade name."

Would you state now whether you ever pressed a Carousel label?

A I say I don't recall, but I may make the comment that that was before we had seen the invoices which triggered off a series of recollections and things were a little clearer.

Q When did you see those invoices again?

A Several weeks ago.

Q For the first time?

A Yes.

Q In California?

A Yes.

Q And from whom were they obtained?

A From the attorney, from John Gray.

Q He is your attorney, though, is he not?

A He is not my attorney.

Q If it helps you to remember whether he was your attorney or not, I have a stipulation in the file entered into between me and Mr. Gray in which you and the defendant were given additional time to answer my complaint.

A He was my attorney then, but not now.

Q When did he cease being your attorney?

A I think Mr. Rich took over the case--

THE COURT: I can't hear you.

A When Mr. Rich or Mr. whoever took over.

MR. RICH: If I may clarify --

Q Did Mr. Gray assist you in preparing this answer to interrogatories?

A Yes.

Q Did Mr. Gray prepare this with you?

A Yes.

MR. COUTURE: I would like to offer this 22 in evidence.

MR. RICH: I have no objection.

THE COURT: Received.

(Plaintiff's Exhibit 22 received in evidence.)

Q I should like to read again from your deposition of August 22, 1969, Mr. Brown.

Question by Mr. Reinis to you:

"I am going to show you a copy of the letter to Playtime Records, Inc. at your address and the plaintiff's attorney in this matter dated May 17, 1966. And, counsel, I would like to attach a copy of this to the deposition.

"Mr. Gray: May I see that?

"Mr. Reinis: May we mark this as Plaintiff's Exhibit 1.

"(Whereupon the document previously referred to by counsel was marked for identification by the notary as Plaintiff's Exhibit No. 1 and is attached to the deposition."

Do you recall that?

A Yes.

Q Is that the letter we have called Plaintiff's Exhibit 15, Mr. Brown?

A I assume it is.

MR. RICH: It is not. It is Plaintiff's Exhibit 14.

MR. COUTURE: Plaintiff's Exhibit 14.

Q Continuing Mr. Reinis' questions:

"Do you recall receiving this letter, Mr. Brown?

"A I'm sorry, no, I don't recall receiving it.

"Q Now, I am going to show you a letter dated June 16, 1966, written on the letterhead of Rainbo Records and signed by Jack G. Brown, President. It is dated June 16, 1966, and I will attach this to the deposition as Exhibit 2. Please read it and then I will ask you a couple of questions about it.

"Let the record indicate that Mr. Brown is holding the original.

"Have you read the letter, Mr. Brown?

"A Yes.

"Q Is that your signature?

"A Yes.

"Q Do you recall writing that letter?

"A I don't recall writing it.

"Q Is that your letterhead?

"A Yes.

"Q It says Rainbo Records, it doesn't indicate whether it is a corporation or not. Does that indicate it is a corporation?

"A You are asking me this --

"Q Is that your corporate name, Rainbo Records?

"A No, it is not a corporate name."

THE COURT: We will take a five-minute recess.

MR. COUTURE: I will be finished in a few minutes.

THE COURT: All right, go ahead.

Q Was that your testimony?

A Yes.

Q At that time. Do you recall that Mr. Reinis then continued to ask you more questions about the letter?

I'm sorry, before that, as you just heard at this time you didn't remember writing the letter.

A That's correct.

Q [illegible] is in 1969, you didn't remember writing that letter in 1966. When was it that you were able to recall writing that letter and became capable of giving us the testimony you gave us this morning regarding it?

A When I had an opportunity to study it and then try to put in juxtaposition what these various questions and answers refer to. At the time I saw this letter I didn't recall seeing it and it came as quite a surprise to me. In the ensuing time I began to reconstruct and think and just gave you the answers that I did.

Q When was the next time that you reconstructed and thought about the letter?

A Well --

Q Was it recently, within 90 days?

A Yes, it was part of that, reviewing that letter, yes.

Q Did you do that alone?

A I did it alone, I did it in concert with other people.

Q With Mr. Gray?

A I don't recall.

MR. RICH: I object at this point, your Honor. Mr. Gray apparently did represent Mr. Brown, was his attorney at a certain point of time. I think it is a question of

vending or otherwise distributing printed copies

privilege.

THE COURT: Sustained.

Q Again reading Mr. Reinis' questions to you concerning that letter at page 38, line 6 -- he is referring to the letter that you wrote, Plaintiff's Exhibit 15 --

"Q You state in the first paragraph there that 'The Carousel and Playtime record line has been inactive for two years.' Were you there referring to record lines not owned by Rainbo Records?

"A I don't recall what the basis for this was.

"Q You say 'We may reactivate the line.' Despite that statement, is it your testimony that you had no interest in those lines?

"A I don't understand. When you say no interest in the line, I don't understand what you mean.

"Q Whom does the word 'We' refer to in the second paragraph, the first word of the second paragraph?

"A I don't recall.

"Q Who is Ed Chalpin?

"A He is in the music business or was in the music business in New York.

"Q And what is PPX?

"A I believe that is the name of his company.

"Q What kind of company was it?

"A Music.

"Q Publishing?

"A Yes, whatever, music publishing, leasing.

"Q You state in the last paragraph the last five words, 'We purchased the entire catalog.' Do you deny that you purchased Playtime and Carousel catalogs?

"A What is your definition of the Carousel and what is your definition of a catalog? I don't recall this.

"Q I am taking your deposition. You tell me what was purchased and by whom.

"A I don't recall the events of this at all and I would have to sort of refresh my memory. I'm sorry, I don't.

"Q From what would you refresh your memory? Do you have any records or documents to indicate this?

"A I don't know, I would have to start rummaging some place I believe.

"Q Do you recall the hold harmless agreement that is mentioned in that third paragraph?

"A No, I don't.

"Q Was your corporation involved in the purchasing of product in the years 1960 and 1961?

"A No.

"Q And you have no idea what the phrase 'We purchased the entire catalog' means?

"A No, I don't.

"Q After reading this letter does it refresh your memory at all as to whether or not Rainbo Records was involved in or had an ownership in the Carousel or Playtime line?

"A No, it doesn't recall anything to me."

Was that your testimony?

A Yes.

Q Were those the questions? All right. But you do recall much better now all of these things, is that your testimony?

A That's correct.

MR. COUTURE: No further questions on cross, your Honor.

THE COURT: Mr. Rich?

MR. RICH: Yes, I have a couple of questions.

THE COURT: Make it fast.

REDIRECT EXAMINATION

BY MR. RICH:

Q Mr. Brown, when Rainbo Records performed pressing services for a customer, did it ever send invoices to itself?

A To itself?

Q Yes. Let me rephrase it.

When Rainbo Records performed pressing services

for a customer, to whom did it send the invoice for these services?

A To the customer.

Q Did Rainbo Records ever maintain a Box 125 in Lawndale, California?

A I don't recall. I think I said that I don't recall.

Q I show you the invoices that you referred to earlier and I show you the first two invoices, sold to Lyric Record Company, Box 125, Lawndale, California.

Would you have sent an invoice to yourself?

A No. I see. No, I would not have.

Q Prior to the partnership in 1960 do you know what business Mr. Taback was in?

A Generally he was in the buying and selling of old records, pressing records, a very miscellaneous kind of a record business.

Q Do you know the name of the attorney for Mr. Taback in 1960 and on through about '62 or '63?

A It was Mr. Gray.

Q Was he your attorney at that time?

A No, I don't think he was my attorney at that time.

Q You had mentioned a dispute with Mr. Taback earlier concerning billing, the prices charged by Rainbo for its pressing services to Mr. Taback. Did Mr. Gray ever become

involved in a situation in which you had a problem with Mr. Taback concerning billing?

A Yes, I believe so. I believe that he objected to the pressing prices.

Q Who was he?

A Mr. Taback wanted some renegotiation at the time.

Q And who did Mr. Gray represent at that time?

A I think he represented Mr. Taback.

MR. RICH: Your Honor, I will represent to the Court that I had received these invoices through Mr. Gray in the file that he had when he had represented Mr. Taback.

THE COURT: What?

MR. RICH: I had received --

THE COURT: I know that. What was the last thing you said.

MR. RICH: I received these invoices through Mr. Gray -- in other words, he had sent them out. He had these, as it is represented to me, if your Honor will hear, a file going back to the time he represented Mr. Taback and this is where he obtained invoices from.

Q I show you the letters that were previously marked as Exhibits 14 and 15 which were referred to on the deposition. The letter from Mr. Couture is dated May 17, 1966, and your responding letter was dated June 16, 1966, and your deposition

was on August 22, 1969, which is more than three years later.

My question to you is, in the interim between the time those letters were written to the time of your examination before trial, excerpts of which were read to you by Mr. Couture, did you read or look at these letters?

A Yes.

Q When did you look at them?

A Could you give me that question again? I don't think I understood it.

Q These letters were written May 17, 1966, and June 16, 1966. Your deposition was taken on August 22, 1969, more than three years later. My question to you is, did you have occasion to look at these letters after the time they were written, on or about those dates, and the time of your deposition?

A No, I wasn't aware of those letters.

MR. RICH: Also I want to read a little past what Mr. Couture had read to you before.

Q "Were you doing business in June of 1966 under the name Rainbo Records?

"A Yes.

"Q So was it a fictitious name owned by the corporation?

"A Yes, I suppose so."

At the top it says -- reading at the top of the letter, it says "Established 1939. Were you involved with Rainbo Records in 1939?

"A Yes.

"Q You said formerly that the corporation was established in the 1940s, is that correct?

"A That's correct.

"Q Then you were carrying on a business as something other than a corporation prior to the 1940s.

"The Witness: Yes."

MR. RICH: I am reading this in, your Honor, so that there is no misconception about the fact that the partnership Rainbo Records had ceased doing business -- I assume this is the reason Mr. Couture had read this in -- he said the same thing before as he did on the trial now, that the partnership known as Rainbo Records with Mr. Markowitz had ceased doing business in the 1940s and then the corporation came into existence at about that time. I just felt Mr. Couture was reading this in to show how his testimony about the partnership and the corporation was different.

MR. COUTURE: I was reading it to show how much better the defendant's memory is now than it was in 1969.

MR. RICH: Certainly not in regard to those.

I have no further questions.

THE COURT: All right, defendant rests?

MR. RICH: Yes.

THE COURT: The plaintiff rests?

MR. COUTURE: Yes.

THE COURT: What do you want to do about briefs, gentlemen?

MR. COUTURE: Two weeks.

THE COURT: Whatever you say. There is no urgency to a 1966 case. I will meet the convenience of counsel.

MR. RICH: Your Honor, I have a very bad time problem now. I am starting a very major long trial before Judge Pollack this month and I imagine that trial will probably last about three weeks. I know between now and the the time the trial starts or ends I won't get a chance to get to the briefs here.

THE COURT: When did you want to? Do you want to exchange briefs?

MR. COUTURE: I would like to reply if I could.

THE COURT: Exchange and each one can reply a week later.

MR. COUTURE: Any time you want. Is three weeks too soon?

MR. RICH: No, I just said I won't have a chance to begin it until probably some time about the middle of November, the earliest date. So I would go along with a suggestion of 90 days.

THE COURT: If we wait that long forget all about it. Make the brief returnable November 30th. Exchange briefs. Then you can have one week after that to reply.

MR. COUTURE: Shall we keep the exhibits?

THE COURT: Better keep the exhibits. You won't be able to write a brief. Exchange exhibits. If the other fellow needs your exhibits give it to him; make some arrangements among yourselves.

All right, I will reserve on all motions. I assume you are making motions now. I don't want too general briefs because I know this field a little bit and there are some very acute problems you have to brief, on the statute of limitations, on whether or not the evidence shows that the defendant was merely a copier, what is the liability of a copier in the Second Circuit, if the infringement was innocent, what flows from that, is this an infringement case under Section 101 or is it a statutory compulsory licensee case in any event, whatever else you think of. But pin it down to those points and by particular composition. That is why I wanted the chart. We could use the chart.

There will be an issue obviously of whether production of the phonograph record in certain of the counts prior to the obtaining of the statutory copyright is publication so as to set off common law rights.

You also have a problem probably of late filing of notice of use and how that affects the facts in the case. The rules of law are difficult, but the facts may be difficult.

I am just giving you some thoughts from the top of my head that would interest me in the briefs.

You raised a question of laches. If you have any authority on laches you best cite it.

Off the record.

(Discussion off the record.)

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WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Marion Rosette	18	68	162	168
Jack G. Brown	181	223	261	

EXHIBIT INDEX

Plaintiff	Identification	In Evidence
1]	23	24
2	25	27
3	26	30
4		27
5	34	38
6,7	37	
8	39	42
9	40	42
10	44	45
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11A	49	63
13	55	
14,15,16	67	68
17	137	
18	166	167
19	227	238
20		233
22	253	255

violin solo chorus.

EXHIBIT INDEX

Defendant	Identification	In Evidence
A	80	84
A-1	83	84
B	94	
C	99	
D,E	100	
F	101	
H	118	160
I	137	
B-1	156	
J	157	
K	186	187
L	211	211
M	211	

DEFENDANTS
EXHIBIT
U. S. DIST. COURT
E. D. OF N. Y.

STRICT COURT
T OF NEW YORK

----------x

U. S. DISTRICT COURT
FILED
JUL 15 1963
S. D. OF N. Y.

ROSETTE,

Plaintiff,

-against-

CROWN RECORD CO., INC.,

Defendant.

INTERROGATORIES

63 Civil Action
File No. 3411

----------x

S I R S :

PLEASE TAKE NOTICE that the defendant demands that the plaintiff answer the following interrogatories under oath and that the said answers be served on the undersigned within twenty (20) days after receipt hereof.

1. As to each and every one of the musical compositions claimed in the complaint either to have been created, composed and written by the plaintiff or adopted and arranged by her:

a. State the date of the completion by the plaintiff of the composition, writing, creation, arrangement or adaptation of each thereof.

b. State whether or not printed reproductions thereof were vended, and if so the date of the first vending thereof and the person, firm or corporation printing, publishing and vending the same. State whether each said printing, publishing and vending was made with plaintiff's consent. If any said consent was given orally, state the date of the giving of each such consent, the person to whom given, and the place given. If any said consent was given in writing, the date thereof, the place given, the person to whom given and attach copies thereof; if copies are not available, state the substance thereof.

c. State whether to plaintiff's knowledge any mechanical reproduction of any of said compositions were made, distributed and vended; if so, set forth the first date of each said mechanical reproduction and vending thereof and the person or corporation who mechanically reproduced the same, or vended or otherwise distributed the same and the place or places where the same were mechanically reproduced, and the place or places where the same were vended or otherwise distributed.

d. State whether each such mechanical reproduction, distribution and vending as is set forth in the Answer to Interrogatory 1c. hereof was made with plaintiff's consent. If said consent was given orally, state the date thereof and the person to whom given; if such consent or consents were given in writing, state the date each said consent was given, the person to whom given and attach a copy of each such consent; if copies are not available, state the substance thereof.

e. List the date on which each Notice of Use for each mechanical reproduction set forth in the Answer to Interrogatory 1c. hereof was first filed in the Office of the Register of Copyrights of the United States, the number thereof, and if a copy of the certificate of the filing of Notice of Use is in the possession or under the control of the plaintiff, attach copies thereof hereto.

2. As to each and every one of the musical compositions claimed in the complaint either to have been created, composed and written by the plaintiff or adopted and arranged by her:

a. State whether the plaintiff claims that the defendant infringed her copyrights and other rights in any such composition by mechanical reproduction thereof and if so, the title of each said composition. If the answer is in the affirmative, as to any such composition state the title of the reproductions alleged to infringe plaintiff's copyrights and other rights and the date when the plaintiff first became aware that each said mechanical reproduction was being distributed or vended.

b. State whether the plaintiff claims that the

defendant infringed her copyrights and other rights in each such composition by printing and either vending or otherwise distributing printed copies thereof. If the answer is in the affirmative, state the title of each said composition and the date on which the plaintiff first became aware that defendant was so infringing her copyrights or other rights.

c. State whether the plaintiff claims that the defendant infringed her copyrights or other rights in any said compositions by means other than those set forth in the Answers to Interrogatories 2a. and 2b. hereof.

d. State when the plaintiff first gave the defendant actual notice of her claim that the defendant was infringing her copyrights and other rights in each such composition. If it is alleged said notices were given orally state the person who gave each of them, the person to whom given and the dates and places thereof and the substance of said communications. If it is alleged said notices were given in writing state the date on which they were given, the persons to whom they were given, whether the said notices were delivered personally or by mail or other means and annex copies of each said notice.

3. As to the compositions "LAZY MARY", "OH DEAR, WHAT CAN THE MATTER BE?", "DID YOU EVER SEE A LASSIE?", "OLD KING COLE", "OATS, PEASE, BEANS AND BARLEY", "THERE WAS A CROOKED MAN", "HICKORY DICKORY DOCK", "A 'HUNTING WE WILL GO", "HEY DIDDLE DIDDLE", "WHERE HAS MY LITTLE DOG GONE", "HUMPTY DUMPTY", "DING DONG BELL", "POP GOES THE WEASEL", "GOOSEY GOOSEY GANDER", "PUSSY CAT PUSSY CAT", "FIDDLE-DE-DEE", "LITTLE BO PEEP, "MISS MUFFETT" and "JACK HORNER", "PAT-A-CAKE", "LITTLE BOY BLUE", "MARY HAD A LITTLE LAMB", "SING A SONG OF SIXPENCE", "THREE BLIND MICE", "HAPPY BIRTHDAY PARTY", "BILLY BOY", "TEN LITTLE INDIANS", "JINGLE BELLS", "THE ALPHABET SONG" and "TO MARKET TO MARKET", identify in detail and separately with reference to the lead sheets attached to the Complaint as Exhibits, all the material which the plaintiff claims to have been original with her.

4. As to the compositions "CHARLIE HAD A CHOO-CHOO", "CHICKEN LICKEN", "THE ELVES AND THE SHOEMAKER",

"THE EMPEROR'S NEW CLOTHES", "FUNNY BUNNY", "THREE LITTLE PIGS", "OLD MOTHER HUBBARD", "THE LION AND THE MOUSE", "THE FISHERMAN AND THE FLOUNDER", "OLD WOMAN WHO LIVED IN A SHOE", "SING A SONG OF SIXPENCE", "PINOCCHIO", "ALICE IN WONDERLAND", "CINDERELLA", "GOLDILOCKS AND THE THREE BEARS", "JACK AND THE BEANSTALK", "LITTLE RED RIDING HOOD", "SNOW WHITE AND THE SEVEN DWARFS", "RAPUNZEL", "COWBOY'S OLD HORSE", "SANTA CLAUS IS FLYING THROUGH THE SKY", "WYNKEN BLYNKEN AND NOD", "BRAVE LITTLE SAMBO", "SLEEPYTIME FOR DOLLY", "NIGHT SONG FOR LITTLE ONE", in each instance:

a. State when it is claimed that Lincoln Records, Inc. complied with Title 17, U. S. Code and secured the copyright of said composition and whether plaintiff's rights therein devolved upon Lincoln Records, Inc. under an oral assignment or written assignment. If any said assignments were made orally, state the date thereof, the place made, the substance of the conversation whereby it is claimed the assignment was effected and the parties to said conversation. If any said assignments were made in writing, state the date on which said writing was delivered, the person signing the same, the person to whom given, the manner of delivery (e.g., whether personally or by mail) and attach copies of each said assignment. If copies are not available to plaintiff, state the substance thereof.

b. In each said instance when it is claimed that Lincoln Records, Inc. obtained the copyright and thereafter sold, transferred, and assigned the same to plaintiff, state whether each said conveyance was by oral assignment or written assignment. If any said assignments were made orally, state the dates thereof, the place made, the substance of the conversation wherein it is claimed the assignment was effected, and the parties to said conversation. If any said assignments were made in writing, state the date on which said writing was delivered, the person signing the same, the person to whom given, the manner of delivery (e.g., whether personally or by mail) and attach copies of each said assignment. If copies are not available to plaintiff, state the substance thereof.

5. a. As to each assignment either for purposes of collateral securing a loan to plaintiff or others or for any other purpose made to Whitehall Mercantile Company of any tapes

of any of the compositions of the plaintiff mentioned in any of the claims in the Complaint of which the plaintiff had knowledge, state the assignor, the assignee, the date of the assignment, the compositions reproduced on each said tape, and the date on which plaintiff acquired knowledge either of the assignment or of the contemplated assignment. If the plaintiff had knowledge that the assignment was being made prior to the actual assignment, state any steps, legal or otherwise, taken by plaintiff to forestall or enjoin said assignments. State any actions, legal or otherwise, taken by plaintiff after any said assignments was made to prevent, restrict or inhibit the use by Whitehall Mercantile Company or anyone acting through or under it of said tapes.

b. As to any of the assignments referred to in Interrogatory 5a. hereof, state whether the plaintiff gave her consent to any of the same either to the assignor, the assignee or any other party. If any consent to any such assignment was made orally, state the date thereof, the place made, the substance of the conversation whereby it is claimed such consent was given, and the parties to said conversation. If any such consent was given in writing, state the date on which said writing was delivered, the person signing the same, the person to whom given, the manner of delivery (e.g., whether personally or by mail) and attach copies of each said consent. If copies of said consents are not in the possession or under the control of plaintiff, state the substance of each said consent.

MARGULIES, HEIT & ROTHENBERG

By: _____
Member of the Firm

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TO:
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Attorneys for Plaintiff

DEFENDANT'S EXHIBIT U. S. DIST. COURT S. D. OF N. Y.

U. S. DISTRICT COURT FILED AUG 25 1953 S. D. OF N. Y.

ES DISTRICT COURT
STRICT OF NEW YORK

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MARION ROSETTE, :

Plaintiff, : ANSWERS TO WRITTEN INTERROGATORIES

-against- :

63 Civil Action

CROWN RECORD CO., INC., : File No. 3411

Defendant. :

- - - - - - - - - - - - - - - - - - x

S I R S :

Plaintiff, MARION ROSETTE, answering the written interrogatories served upon her by defendant, states as follows:

Answering Interrogatory No. 1

(a) The approximate date of the completion by plaintiff of each musical composition infringed by defendant follows:

LAZY MARY	July, 1951
RUNAWAY CHOO-CHOO TRAIN	February, 1949
PADDY THE BAKERY BOY	February, 1949
CHICKEN LICKEN	February, 1949
SHOEMAKER AND THE ELVES	February, 1949
THE FROG AND THE OX	February, 1949
OH DEAR, WHAT CAN THE MATTER BE	August, 1951
DID YOU EVER SEE A LASSIE	July, 1951
OLD KING COLE	July, 1951
OATS PEAS BEANS AND BARLEY	July, 1951
THERE WAS A CROOKED MAN	August, 1949
THE EMPEROR'S NEW CLOTHES	June, 1950
FUNNY BUNNY	December, 1948
THREE LITTLE PIGS	December, 1948
OLD MOTHER HUBBARD	January, 1949
THE LION AND THE MOUSE	January, 1949
THE FISHERMAN AND THE FLOUNDER	January, 1949

HICKORY DICKORY DOCK	July, 1951
A'HUNTING WE WILL GO	July, 1951
HEY DIDDLE DIDDLE	July, 1951
WHERE HAS MY LITTLE DOG GONE	July, 1951
HUMPTY DUMPTY	July, 1951
OLD WOMAN WHO LIVED IN A SHOE	August, 1949
DING DONG BELL	August, 1949
POP GOES THE WEASEL	July, 1951
GOOSEY GOOSEY GANDER	July, 1951
PUSSYCAT, PUSSYCAT	July, 1951
FIDDLE DE DEE	July, 1951
LITTLE BO PEEP	July, 1951
PAT-A-CAKE	July, 1951
LITTLE BOY BLUE	July, 1951
MARY HAD A LITTLE LAMB	July, 1951
SING A SONG OF SIXPENCE	July, 1951
PINOCCHIO	May, 1952
ALICE IN WONDERLAND	May, 1952
CINDERELLA	January, 1949
GOLDILOCKS AND THE THREE BEARS	March, 1948
JACK AND THE BEANSTALK	April, 1949
LITTLE RED RIDING HOOD	March, 1948
SNOW WHITE AND THE SEVEN DWARFS	July, 1950
RAPUNZEL	July, 1950
THREE BLIND MICE	July, 1951
HAPPY BIRTHDAY PARTY	July, 1951
COWBOY'S OLD HORSE	July, 1950
BILLY BOY	July, 1951
TEN LITTLE INDIANS	July, 1951
SANTA CLAUS IS FLYING THROUGH THE SKY	June, 1950
JINGLE BELLS	July, 1951
WYNKEN BLYNKEN AND NOD	June, 1950
BRAVE LITTLE SAMBO	December, 1948
THE ALPHABET SONG	July, 1951
TO MARKET, TO MARKET	July, 1951
SLEEPY TIME FOR DOLLY	December, 1948
NIGHT SONG FOR LITTLE ONE	January, 1949

(b) No printed reproductions were made of plaintiff's subject musical compositions.

(c) Authorized mechanical reproductions of plaintiff's subject musical compositions were first made, distributed and vended by LINCOLN RECORDS, INC. and JUNIOR RECORDS, INC. All said mechanical reproductions were made in New York, New York, and vended and distributed throughout

the United States. The date of the first mechanical reproduction of each infringed composition and the corporation which first mechanically reproduced it follow (Lincoln Records, Inc. is indicated by "(L)" following the listed date, and Junior Records, Inc. by "(J)"):

LAZY MARY	8/20/51 (J)
RUNAWAY CHOO-CHOO TRAIN	2/17/49 (L)
PADDY THE BAKERY BOY	2/17/49 (L)
CHICKEN LICKEN	2/15/49 (L)
SHOEMAKER AND THE ELVES	2/15/49 (L)
THE FROG AND THE OX	2/15/49 (L)
OH DEAR, WHAT CAN THE MATTER BE	8/23/51 (J)
DID YOU EVER SEE A LASSIE	8/9/51 (J)
OLD KING COLE	8/17/51 (J)
OATS PEAS BEANS AND BARLEY	8/13/51 (J)
THERE WAS A CROOKED MAN	9/29/49 (L)
THE EMPEROR'S NEW CLOTHES	7/25/50 (L)
FUNNY BUNNY	1/4/49 (L)
THREE LITTLE PIGS	1/7/49 (L)
OLD MOTHER HUBBARD	2/15/49 (L)
THE LION AND THE MOUSE	1/24/49 (L)
THE FISHERMAN AND THE FLOUNDER	2/17/49 (L)
HICKORY DICKORY DOCK	8/9/51 (J)
A'HUNTING WE WILL GO	2/15/49 (L)
HEY DIDDLE DIDDLE	8/17/51 (J)
WHERE HAS MY LITTLE DOG GONE	8/10/51 (J)
HUMPTY DUMPTY	8/16/51 (J)
OLD WOMAN WHO LIVED IN A SHOE	9/29/49 (L)
DING DONG BELL	9/30/49 (L)
POP GOES THE WEASEL	8/16/51 (J)
GOOSEY GOOSEY GANDER	8/16/51 (J)
PUSSYCAT, PUSSYCAT	8/21/51 (J)
FIDDLE DE DEE	8/17/51 (J)
LITTLE BO PEEP	8/21/51 (J)
PAT-A-CAKE	8/23/51 (J)
LITTLE BOY BLUE	8/16/51 (J)
MARY HAD A LITTLE LAMB	8/16/51 (J)
SING A SONG OF SIXPENCE	8/17/51 (J)
PINOCCHIO	6/5/52 (J)
ALICE IN WONDERLAND	6/5/52 (J)
CINDERELLA	1/24/49 (L)
GOLDILOCKS AND THE THREE BEARS	4/19/48 (L)
JACK AND THE BEANSTALK	5/9/49 (L)
LITTLE RED RIDING HOOD	4/19/48 (L)
SNOW WHITE AND THE SEVEN DWARFS	7/26/50 (L)
RAPUNZEL	7/26/50 (L)

THREE BLIND MICE	8/21/51 (J)
HAPPY BIRTHDAY PARTY	8/13/51 (J)
COWBOY'S OLD HORSE	7/27/50 (L)
BILLY BOY	8/13/51 (J)
TEN LITTLE INDIANS	8/16/51 (J)
SANTA CLAUS IS FLYING THROUGH THE SKY	7/25/50 (L)
JINGLE BELLS	8/9/51 (J)
WYNKEN BLYNKEN AND NOD	7/25/50 (L)
BRAVE LITTLE SAMBO	1/24/49 (L)
THE ALPHABET SONG	8/20/51 (J)
TO MARKET, TO MARKET	8/23/51 (J)
SLEEPY TIME FOR DOLLY	1/4/49 (L)
NIGHT SONG FOR LITTLE ONE	1/24/49 (L)

(d) Each mechanical reproduction, distribution and vending set forth in the Answer to Interrogatory 1(c) was made with plaintiff's consent. Said consents were given as follows:

Lincoln Records, Inc. - Orally upon the assignment of plaintiff's rights in and to the particular compositions at the time of their creation 4 to 6 weeks before they were mechanically reproduced in New York, New York to George Rosette, at that time an officer in said corporation.

Junior Records, Inc. - Orally to George Rosette, then an officer of said corporation, prior to mechanical reproduction (exact date unknown) - a written license granted June 23, 1952 in New York, New York, delivered to the aforesaid George Rosette. A copy of said writing is attached hereto and marked "Exhibit A".

(e) The date on which the Notice of Use for each mechanical reproduction set forth in the answer to Interrogatory 1(c) was filed with the Register of Copyrights

are (volume and page numbers are given immediately after the title, followed by the date):

LAZY MARY	60/907	(10/21/63)
RUNAWAY CHOO-CHOO TRAIN	45/865	(1/25/61)
PADDY THE BAKERY BOY	45/866	(1/25/61)
CHICKEN LICKEN	45/865	(1/25/61)
SHOEMAKER AND THE ELVES	45/865	(1/25/61)
THE FROG AND THE OX	45/865	(1/25/61)
OH DEAR, WHAT CAN THE MATTER BE	68/348	(2/9/65)
DID YOU EVER SEE A LASSIE	68/348	(2/9/65)
OLD KING COLE	63/322	(3/20/64)
OATS PEAS BEANS AND BARLEY	68/348	(2/9/65)
THERE WAS A CROOKED MAN	68/349	(2/9/65)
THE EMPEROR'S NEW CLOTHES	45/866	(1/25/61)
FUNNY BUNNY	45/866	(1/25/61)
THREE LITTLE PIGS	45/866	(1/25/61)
OLD MOTHER HUBBARD	45/865	(1/25/61)
THE LION AND THE MOUSE	45/865	(1/25/61)
THE FISHERMAN AND THE FLOUNDER	45/865	(1/25/61)
HICKORY DICKORY DOCK	68/348	(2/9/65)
A 'HUNTING WE WILL GO	68/349	(2/9/65)
HEY DIDDLE DIDDLE	60/907	(10/21/63)
WHERE HAS MY LITTLE DOG GONE	60/907	(10/21/63)
HUMPTY DUMPTY	60/907	(10/21/63)
OLD WOMAN WHO LIVED IN A SHOE	45/866	(1/25/61)
DING DONG BELL	60/907	(10/21/63)
POP GOES THE WEASEL	63/322	(3/20/64)
GOOSEY GOOSEY GANDER	60/907	(10/21/63)
PUSSYCAT, PUSSYCAT	68/348	(2/9/65)
FIDDLE DE DEE	68/349	(2/9/65)
LITTLE BO PEEP	60/907	(10/21/63)
PAT-A-CAKE	68/349	(2/9/65)
LITTLE BOY BLUE	60/907	(10/21/63)
MARY HAD A LITTLE LAMB	60/907	(10/21/63)
SING A SONG OF SIXPENCE	63/322	(3/20/64)
PINOCCHIO	63/322	(3/20/64)
ALICE IN WONDERLAND	63/322	(3/20/64)
CINDERELLA	45/866	(1/25/61)
GOLDILOCKS AND THE THREE BEARS	45/866	(1/25/61)
JACK AND THE BEANSTALK	45/866	(1/25/61)
SNOW WHITE AND THE SEVEN DWARFS	45/865	(1/25/61)
RAPUNZEL	45/865	(1/25/61)
THREE BLIND MICE	63/322	(3/20/64)
HAPPY BIRTHDAY PARTY	60/907	(10/21/63)
COWBOY'S OLD HORSE	45/865	(1/25/61)
BILLY BOY	68/349	(2/9/65)
TEN LITTLE INDIANS	65/322	(3/20/64)
SANTA CLAUS IS FLYING THROUGH THE SKY	45/865	(1/25/61)

JINGLE BELLS	60/907	(10/21/63)
WYNKEN BLYNKEN AND NOD	45/865	(1/25/61)
BRAVE LITTLE SAMBO	45/866	(1/25/61)
THE ALPHABET SONG	63/322	(3/20/64)
TO MARKET, TO MARKET	63/322	(3/20/64)
SLEEPY TIME FOR DOLLY	45/866	(1/25/61)
NIGHT SONG FOR LITTLE ONE	45/865	(1/25/61

Copies of the certificates of the filing of the Notices of Use are attached hereto and marked "Exhibit B".

Answering Interrogatory No. 2.

(a) Plaintiff claims that defendant infringed her rights in the subject musical compositions by mechanical reproduction. Plaintiff first became aware of certain of defendant's infringements when she first found an infringing album (Crown CLP 5075) in November or December, 1957. Plaintiff has no record of the dates when she first became aware of the other infringements but it was, for each, sometime within 1958. Plaintiff's compositions and the titles of defendant's infringing mechanical reproductions follow:

Plaintiff's Musical Compositions	Defendant's Reproductions
LAZY MARY	LAZY MARY
RUNAWAY CHOO-CHOO TRAIN	CHOO CHOO
PADDY THE BAKERY BOY	PADDY McGHEE
CHICKEN LICKEN	CHICKEN LICKEN
SHOEMAKER AND THE ELVES	SHOEMAKER AND THE ELVES
THE FROG AND THE OX	THE FROG AND THE OX
OH DEAR WHAT CAN THE MATTER BE	OH DEAR WHAT CAN THE MATTER BE
DID YOU EVER SEE A LASSIE	DID YOU EVER SEE A LASSIE
OLD KING COLE	OLD KING COLE
OATS PEAS BEANS AND BARLEY	OATS PEAS BEANS AND BARLEY
THERE WAS A CROOKED MAN	THERE WAS A CROOKED MAN
THE EMPEROR'S NEW CLOTHES	THE EMPEROR
FUNNY BUNNY	FUNNY BUNNY
THREE LITTLE PIGS	THREE LITTLE PIGS
OLD MOTHER HUBBARD	OLD MOTHER HUBBARD

THE LION AND THE MOUSE	THE LION AND THE MOUSE
THE FISHERMAN AND THE FLOUNDER	THE FLOUNDER IN THE SEA
HICKORY DICKORY DOCK	HICKORY DICKORY DOCK
A "HUNTING WE WILL GO	A 'HUNTING WE WILL GO
HEY DIDDLE DIDDLE	HEY DIDDLE DIDDLE
WHERE HAS MY LITTLE DOG GONE	WHERE HAS MY LITTLE DOG GONE
HUMPTY DUMPTY	HUNPTY DUMPTY
OLD WOMAN WHO LIVED IN A SHOE	OLD WOMAN WHO LIVED IN A SHOE
DING DONG BELL	DING DONG BELL
POP GOES THE WEASEL	POP GOES THE WEASEL
GOOSEY GOOSEY GANDER	GOOSEY GOOSEY GANDER
PUSSYCAT, PUSSYCAT	PUSSYCAT, PUSSYCAT
FIDDLE DE DEE	FIDDLE DE DEE
LITTLE BO PEEP	LITTLE BO PEEP
PAT-A-CAKE	PAT-A-CAKE
LITTLE BOY BLUE	LITTLE BOY BLUE
MARY HAD A LITTLE LAMB	MARY HAD A LITTLE LAMB
SING A SONG OF SIXPENCE	SING A SONG OF SIXPENCE
PINOCCHIO	PINOCCHIO
ALICE IN WONDERLAND	ALICE IN WONDERLAND
CINDERELLA	CINDERELLA
GOLDILOCKS AND THE THREE BEARS	GOLDILOCKS AND THE THREE BEARS
JACK AND THE BEANSTALK	JACK AND THE BEANSTALK
LITTLE RED RIDING HOOD	LITTLE RED RIDING HOOD
SNOW WHITE AND THE SEVEN DWARFS	SNOW WHITE AND THE SEVEN DWARFS
RAPUNZEL	RAPUNZEL
THREE BLIND MICE	THREE BLIND MICE
HAPPY BIRTHDAY PARTY	HAPPY BIRTHDAY PARTY
COWBOY'S OLD HORSE	COWBOY'S LAMENT
BILLY BOY	BILLY BOY
TEN LITTLE INDIANS	TEN LITTLE INDIANS
SANTA CLAUS IS FLYING THROUGH THE SKY	SANTA CLAUS IS FLYING THROUGH THE AIR
JINGLE BELLS	JINGLE BELLS
WYNKEN BLYNKEN AND NOD	WYNKEN BLYNKEN AND NOD
BRAVE LITTLE SAMBO	LITTLE SAMBO
TO MARKET, TO MARKET	TO MARKET, TO MARKET
SLEEPY TIME FOR DOLLY	SLEEPY TIME FOR DOLLY
NIGHT SONG FOR LITTLE ONE	NIGHT SONG FOR LITTLE ONE
THE ALPHABET SONG	THE ALPHABET SONG

(b) Plaintiff does not so claim.

(c) Plaintiff does not so claim.

(d) Notice of defendant's infringements was given defendant in writing, by mail, prior to service upon defendant, on November 14, 1959, of a summons and verified

complaint alleging said infringements in an action in the Supreme Court of the State of New York, County of New York. Neither plaintiff, nor her attorney at that time, Frank Ippolito, Esq., however, presently have copies of said written notice of infringement, nor does either have a record of the date it was given.

Answering Interrogatory No. 3

With reference to the lead sheet attached to the complaint as exhibits, the following material was created by the plaintiff:

LAZY MARY: Original dialogue, musical interludes, inclusion of See Saw Marjorie Daw, and of Mistress Mary with original words.

OH DEAR, WHAT CAN THE MATTER BE: Original dialogue, musical interludes, and words and lyrics of verses 3 and 4 and the second chorus.

DID YOU EVER SEE A LASSIE: Original dialogue, lyrics of 2, 3, 4, 5 and 6th choruses.

OLD KING COLE: Original dialogue, words of second and third choruses, original music for string trio, and words of fourth chorus.

OATS, PEAS, BEANS AND BARLEY: Original introduction with sound effects and words of choruses 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14.

THERE WAS A CROOKED MAN: Original introduction, dialogue dramatization and words of chorus 2.

HICKORY DICKORY DOCK: Original dialogue, arrangement with sound effects and words of choruses 2, 3 and 4.

A 'HUNTING WE WILL GO: Original dialogue and four choruses.

HEY DIDDLE DIDDLE: Original narration, dialogue, introduction, 2nd, 3rd and 4th violin solo chorus.

WHERE HAS MY LITTLE DOG GONE: Original dialogue and 4 choruses.

HUMPTY DUMPTY: Original dialogue dramatization and 2nd chorus.

DING DONG BELL: Entirely original music, dialogue, and 2nd and 3rd verses.

POP GOES THE WEASEL: Original arrangement, introduction, dialogue and three original choruses.

GOOSEY GOOSEY GANDER: Original dialogue, novelty instrumental chorus, and 5 choruses.

PUSSYCAT, PUSSYCAT: Original dialogue and 3 choruses.

FIDDLE DE DEE: Original introduction, violin obbligato to each chorus, one original instrumental chorus, and original words of choruses 2, 3, 4, 5 and 6.

LITTLE BO PEEP: Original medley includes Miss Muffett and Jack Horner with added original choruses for all three.

PAT-A-CAKE: Original dialogue and 2 choruses.

LITTLE BOY BLUE: Original introduction, dialogue, words to "Baa, Baa, Black Sheep" and original second chorus.

MARY HAD A LITTLE LAMB: Original dialogue and 2 original choruses.

SING A SONG OF SIXPENCE: Original introduction, dialogue, inserts in first 3 choruses and original 4th and 5th choruses.

THREE BLIND MICE: Original dialogue, arrangement including chorus of "Cock-a-Doodle-Doo", narration and 5 original choruses.

HAPPY BIRTHDAY PARTY: Entirely original words and music.

BILLY BOY: Original dialogue and 4 original choruses.

TEN LITTLE INDIANS: Original arrangement includes instrumental chorus, one original chorus and two long chants to drum accompaniments.

JINGLE BELLS: Original second verse.

THE ALPHABET SONG: Original music box arrangement, dialogue and 3 original choruses.

TO MARKET, TO MARKET: Original dialogue, and 8 choruses.

Answering Interrogatory No. 4

(a) All of the compositions referred to in this interrogatory (with the exception of SING A SONG OF SIXPENCE, PINOCCHIO and ALICE IN WONDERLAND, as to which the complaint herein is in error in alleging that Lincoln Records, Inc. secured the copyright - said copyrights were secured by the plaintiff on the dates therein alleged) were assigned by the plaintiff orally to George Rosette, representing Lincoln Records, Inc. The substance of the assignment agreement was that all rights in the compositions were to be Lincoln Records, Inc.'s royalty-free and that all rights were to be reassigned to the plaintiff at such time as George Rosette no longer held a controlling interest in Lincoln Records, Inc. The said oral assignment of each composition was made in New York, New York four to six weeks prior to its mechanical reproduction by Lincoln Records, Inc. (See Answer to Interrogatory No. 1(c).) Lincoln Records, Inc. complied with Title 17 of the U. S. Code and secured the copyright of each composition on the following dates:

CHARLIE HAD A CHOO CHOO (Runaway Choo Choo Train)	5/13/49
CHICKEN LICKEN	1/31/51
THE ELVES AND THE SHOEMAKER	5/13/49
THE EMPEROR'S NEW CLOTHES	1/31/51
FUNNY BUNNY	5/13/49
THREE LITTLE PIGS	5/13/49
OLD MOTHER HUBBARD	5/13/49
THE LION AND THE MOUSE	5/13/49
THE FISHERMAN AND THE FLOUNDER	5/13/49
OLD WOMAN WHO LIVED IN A SHOE	1/31/51
CINDERELLA	1/31/51
GOLDILOCKS AND THE THREE BEARS	5/13/49
JACK AND THE BEANSTALK	1/31/51
LITTLE RED RIDING HOOD	5/23/49
SNOW WHITE AND THE SEVEN DWARFS	1/31/51
RAPUNZEL	1/31/51
COWBOY'S OLD HORSE	1/31/51
SANTA CLAUS IS FLYING THROUGH THE SKY	1/31/51
WYNKEN BLYNKEN AND NOD	1/31/51
BRAVE LITTLE SAMBO	5/12/49
SLEEPYTIME FOR DOLLY	5/13/49
NIGHT SONG FOR LITTLE ONE	5/13/49

(b) The assignment of each composition herein (with the exception of SING A SONG OF SIXPENCE, PINOCCHIO and ALICE IN WONDERLAND, as explained above) was in writing and was delivered personally to the plaintiff on or about October 23, 1951, and signed by John Bromley, Jr. A copy of the said assignment of each is attached hereto and marked "Exhibit C".

Answering Interrogatory No. 5

(a) No assignment of any tapes was made by plaintiff or anyone with her authorization to Whitehall Mercantile Corporation. Master tapes were pledged, however, with Whitehall as collateral under a loan agreement dated March 2, 1953, by Junior Records, Inc., the corporation to whom plaintiff had granted a license for mechanical

reproductions of the subject musical compositions. Said Junior Records, Inc. defaulted on the loan and the master tapes were taken by Whitehall under the aforementioned collateral loan agreement. These tapes included a separate tape for each composition in plaintiff's complaint. Plaintiff had knowledge of the pledge of the master tapes at the time of the loan agreement and had knowledge of the taking of the tapes by Whitehall on Junior's default. Plaintiff took no action to prevent, restrict or inhibit the use by Whitehall of any of said tapes, although it was made known to Whitehall that the use of said tapes carried with it the continuing obligation to pay mechanical royalties to the copyright proprietor of the musical compositions embodied therein.

Defendant's Exhibit A and A1 - Interrogatories
(p.344a-1 to 344a-18)

(b) No consent was given by plaintiff to an assignment of any of the aforementioned master tapes. As stated above, however, plaintiff made no objection to the pledge of the tapes as collateral nor to their acquisition by Whitehall upon Junior's default.

Marion Rosette

Marion Rosette

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

On the 17th day of August, 1966, before me came MARION ROSETTE, to me known and known to me to be the individual described in, and who executed, the foregoing instrument, and acknowledged to me that she executed the same.

Harriet Schancer

HARRIET SCHANCER
Notary Public, State of New York
No. 03 3790250
Qualified in Bronx County
Commission Expires March 30, 1968

DEFENDANT'S
EXHIBIT
U.S. DIST. COURT
S. D. OF N. Y.

B-1d

DEFENDANTS' EXHIBIT B-1d. - ASSIGNMENT 344a-19

November 10 , 1953.

Whitehall Mercantile Corp.,
171 Madison Avenue,
New York City

Dear Sirs:

I am the copyright owner of the words and musical compositions set forth in the annexed schedule and I grant to you or your assigns the irrevocable right to use the said musical compositions in the manufacture and sale of sound records, within and without the United States for the term of life of the copyright.

1. You shall pay royalties and account to me quarter-annually on the basis of records sold.

2. For such records manufactured which are 45 R.P.M. records the royalty shall be ½¢ per side; for such records as are 10" 78 R.P.M. records the royalty shall be ½¢ per side; and for such records as are 7" 78 R.P.M. records the royalty shall be ¼¢ per side.

3. You need not serve or file the notice required by the copyright act.

I agree that I shall not license any other person or corporation to use the said musical compositions shown in the annexedschedule for the manufacture and sale of sound records, and that I represent that the only person herefore licensed was Junior Records Inc.

Very truly yours,

Damon Rosetta

Plaintiff's Ex. #2
1/13/59 - Hoyt W. Schumacher

SCHEDULE "A"

ER OR	TITLE OF MUSICAL COMPOSITION	DATE OF COPYRIGHT	COPYRIGHT NUMBER
	Goldilocks and the Three Bears	May 23, 1949	Eunpub. 166859
	The Pied Piper	May 23, 1949	Eunpub. 166860
	Little Red Riding Hood	May 23, 1949	Eunpub. 166858
	Old King Cole		
	Little Red Hen	May 12, 1949	Eunpub. 167328
	Our Birthday Party	May 12, 1949	Eunpub. 167319
	Funny Bunny	May 12, 1949	Eunpub. 167321
	Three Little Pigs	May 12, 1949	Eunpub. 167312
	Hobbledy Horse	May 12, 1949	Eunpub. 167314
	The Wee Wump	May 12, 1949	Eunpub. 167326
	Sleepytime For Polly	May 12, 1949	Eunpub. 167323
	Paddy the Bakery Boy	May 12, 1949	Eunpub. 167322
	Brave Little Sambo	May 12, 1949	Eunpub. 167320
	Cinderella	May 12, 1949	Eunpub. 227883
	Jack and the Beanstalk	Jan. 31, 1951	Eunpub. 227889
	'Twas the Night Before Christmas	Jan. 31, 1951	Eu 227884
	There Was A Crooked Man		
	Old Woman who Lived in a Shoe	Jan. 31, 1951	Eu 227881
	To Market, To Market		
	The Gingerbread Man	Jan. 31, 1951	Eu 227882
	Hum-de-Diddle, The Runaway Fiddle	Jan. 31, 1951	Eu 227887
	Oats, Peas, Beans and Barley		
	Goosey, Goosey Gander		
	Ding Dong Bell		
	The Three Billygoats	Jan. 31, 1951	Eu 227888
	Georgie Porgie		
	Billy Boy		
	The Emperor's New Clothes	Jan. 31, 1951	Eu 227889
	Where Has my Little Dog Gone		
	Mother Goose Party		
	A-Hunting we will Go		
	She'll be Comin' Round the Mountain		
	Cowboy's Old Horse	Jan. 31, 1951	Eu 227890
	The Traveling Musicians	Jan. 31, 1951	Eu 227891
	Sing a Song of Sixpence		
	The City Mouse and the Country Mouse	Jan. 31, 1951	Eu 227892
	Middle-de-Doe		
	Snow White and the Seven Swarfs	Jan. 31, 1951	Eu 227880
	The Lion and the Mouse	May 12, 1949	Eunpub. 617313
	Wynken, Blynken and Nod	Jan. 31, 1951	Eu 227879
	Rapunzel	Jan. 31, 1951	Eu 227896
	The Fisherman and the Flounder	May 12, 1949	Eunpub. 167316
	Night Song for Little One	May 12, 1949	Eunpub. 167327
	Chicken-Licken	Jan. 31, 1951	Eunpub. 227897
	The Frog and the Ox	May 12, 1949	Eunpub. 167315
	The Elves	May 12, 1949	Eunpub. 167324
	Old Mother Hubbard	May 12, 1949	Eunpub. 167325
	Charlie Had a Choo-Choo	May 12, 1949	Eunpub. 167318
	The Monkey Who Wanted to Fly	May 12, 1949	Eunpub. 167317
	Santa Claus is Flying Thru the Sky	Jan. 31, 1951	Eu 227885

Legend: "B" Words and Music by Marion Rosette "W" Words "M" Music

DEFENDANTS' EXHIBIT C-id. - LETTER DATED FEBRUARY 27, 1953
FROM JUNIOR RECORDS, INC. TO
AUDIO MATRIX, INC.

February 27, 1953

Audie Matrix Inc.,
915 Westchester Avenue
Bronx, New York

Dear Sirs:

You are presently holding for us the following:

288 metal master recordings
288 "mothers"

Please take notice that we have this day pledged the above to Whitehall Mercantile Corporation, 171 Madison Avenue, New York City. Accordingly, the same are henceforth to be held and disposed of by you solely in accordance with the instructions of Whitehall Mercantile Corp.

Please be good enough to indicate your receipt of and acquiescence in the foregoing by signing below.

Very truly yours,

junior Records, Inc.

by /s/ George Rosette
President

We acknowledge receipt of the foregoing instructions, and acquiesce therein:

Audio Matrix, Inc.

by /s/ Milton Gelfand

DEFENDANTS' EXHIBIT D-Id. - LETTER DATED MARCH 11, 1953 FROM AUDIO MATRIX, INC TO JUNIOR RECORDS, INC.

Telephone LUDLOW 9-3500-1

MASTERS STAMPERS

MOTHERS STRIKE-OFFS

PLATING AND ELECTR -FORMING FOR THE PHONOGRAPH RECORD INDUSTRY

915 Westchester Ave., Bronx 59, N.Y.

March 11, 1953

Junior Records, Inc.
373 Fifth Avenue
New York, N.Y.

Gentlemen:

Please be advised that we have in our vault, the following Metal Masters and Mothers which we have made for, and billed to Junior Records, Inc. :

Ninety Six (96)	10" 78 rpm Masters & Mothers
Ninety Six (96)	7" 78 rpm Masters & Mothers
Ninety Six (96)	7" 78 rpm Masters & Mothers

Yours truly,

Audio Matrix

/s/ Milton Gelfand
Milton Gelfand

MG:sl

DEFENDANTS' EXHIBIT E-Id. - LETTER DATED MARCH 12, 1953
FROM BELTONE RECORDING CORP. TO JUNIOR RECORD, INC.

BELTONE
Recording Corporation

709 Eighth Avenue
New York 19, N.Y.

March 12, 1953

Junior Record Inc.
373 Fifth Avenue
New York, N.Y.

Gentlemen:

This is to acknowledge that we have the following tapes recorded by Junior Record Inc. in our possession.

These tapes are:

1501
thru
1548

Very truly yours,

/s/ Leslie C. Cahan

Leslie C. Cahan Pres.

Beltone Recording Corp.

DEFENDANTS'
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

DEFENDANTS' EXHIBIT F-Id. - AGREEMENT 347a-1

April 21, 1955.

F ID

Dear Sir:

We confirm herewith the following transaction with you:

1. We are selling to you, and you are purchasing from us, all our right, title and interest in and to the following:

(a) The personal property listed and described on Schedule A attached hereto. As to such property, we warrant that we have good title, free and clear of any liens or encumbrances, and have the right to sell the same to you herewith; but, except as so warranted, the sale of said property to you is "as is", without recourse against us with respect to the quality, condition, or merchantability thereof.

(b) A certain letter dated November 10, 1953, addressed to us and signed by Marion Rosette. With respect to said letter this sale is without warranty or representation, and without recourse as against us in any event. This limitation shall not apply to the personal property described in subparagraph (a) above, nor affect the warranties therein stated.

2. The selling price which you will pay to us is Ten Thousand ($10,000) Dollars, payable by you as follows:

(a) $1,000 on account, receipt whereof is hereby acknowledged.

(b) $1,500 payable at the rate of $500 per month on the tenth days of May, June and July, 1955.

(c) $6,000 payable at the rate of $1,000 per month on the tenth days of August, 1955 to January, 1956, inclusive.

(d) The balance of $1,500 payable on February 10, 1956.

3. Possession of the property sold to you hereby shall be given to you as follows:

(a) The property described as Item 4 on Schedule A has been delivered to you.

(b) The property described as Item 2 and Item 3 on Schedule A shall be delivered to you when a total of $5,000 shall have been paid by you hereunder.

(c) When the entire selling price has been paid by you, you shall receive the property described as Item 1 on Schedule A, and the letter described in Paragraph 1(b) above together with an assignment thereof to you.

Any loss or damage to any of said property, up to the time of delivery thereof to you, shall be at our risk. Delivery shall be made at our office.

4. At any time hereafter upon your request, we shall make available to you all our records and documents relating to the above-described property.

Kindly confirm by signing below.

Very truly yours,

WHITEHALL MERCANTILE CORPORATION

by Stanley R. Waterman
President

The foregoing is hereby approved, confirmed and accepted:

Aaron Eichler

SCHEDULE A

Item #1:- Twenty-Seven (27) Reels of Magnetic Tape on which are recorded Ninety-six (96) songs purporting to be the existing Catalog of JUNIOR RECORDS, INC.

Item #2:- Approximately 625 Metal Masters & Mothers.

Item #3:- All Stampers in our actual possession.

Item #4:- All Lithographed sleeves in our actual possession.

DEFENDANT'S
EXHIBIT
U. DIST. COURT
S. D. OF N. Y.

EXHIBIT G-Id. - TRANSCRIPT OF PROCEEDINGS IN NEW YORK STATE SUPREME COURT BEFORE STREIT, J. ON DECEMBER 14, 1960

URT OF THE STATE OF NEW YORK

NEW YORK.

CORD CORP.,

Plaintiff,

- against -

JUNIOR RECORDS, INC.; MARION ROSETTE, GEORGE A. ROSETTE, LINCOLN RECORDS, INC., and TREASURE RECORDS, INC.,

Defendants.

County Court House,
60 Centre Street,
New York City, N. Y.
Special and Trial Term Part XIV.
December 14th, 1960.

B E F O R E :

HONORABLE SAUL S. STREIT,
Justice.

A P P E A R A N C E S :

LOUIS N. FORMAN, Esq.,
Attorney for the Plaintiff.

FRANK L. IPPOLITO, Esq.,
Attorney for the Defendant.

RAYMOND F. FOY, C.S.R.,
Official Court Reporter.

- Stipulation -

THE COURT: It is hereby stipulated and agreed between the parties that the above entitled action be and the same is hereby settled under the following terms and conditions; that with respect to the tapes which are in issue in this case, that is, the Junior Records, Inc., tapes, which were pledged on March 2nd, 1953, to the Whitehall Mercantile Corporation, and later, on April 21st, 1955, sold to the plaintiff by Whitehall:

First, the tapes now owned by the plaintiff may be used by him for the purpose of producing phonograph records.

MR. FORMAN: In other words, if he intends to assign these tapes or sell them --

THE COURT: They may be used by him for all purposes. As to the same tapes, it is understood that the defendants have identical copies of the same tapes, which may produce the same records. These tapes now owned and possessed by the defendants may be used by the defendants as well as the plaintiff, but not under the same

name; is that correct?

MR. FORMAN: Yes, sir.

THE COURT: Second, that the defendant will turn over to the plaintiff 3,000 L. P. twelve inch Treasure Records, which will be distributed among ten different numbers, in as nearly equal numbers as possible.

Third, on the question of royalties, the defendants hereby waive any royalties that may be due from the plaintiff on any of the Junior Records that may have been sold by the plaintiff. If someone else sells them the royalties are still due. But as of this date the plaintiff agrees to pay the standard royalties to the composer and the author of any records hereafter produced on the tapes above referred to.

Fourth, upon receipt of the records the plaintiff will issue general releases to all five defendants.

Is there anything else?

MR. IPPOLITO; Yes, your Honor.

THE COURT: This is all without interest,

costs, or disbursements.

MR. IPPOLITO: This is off the record.

(Whereupon there ensued a discussion which was off the record.)

THE COURT: It is further agreed that Mr. Eichler will furnish a statement --

MR. IPPOLITO: He can tell us now.

MR. EICHLER: Only Crown Records Company.

THE COURT: Is there anything else?

MR. EICHLER: Mannie Kopelman.

MR. ROSETTE:: What about Coronet?

MR. EICHLER: That is Mannie Kopelman.

MR. IPPOLITO: So the only persons you sold --

MR. EICHLER: Mannie Kopelman and Crown, yes.

MR. IPPOLITO: And you also are going to represent that you did not sell them these tapes representing them as royalty free?

MR. EICHLER: Yes.

MR. IPPOLITO: Is that correct?

MR. EICHLER: Definitely.

- Stipulation -

MR. IPPOLITO: To clear it up, they were sold subject to payment of royalties?

MR. EICHLER: That is right.

THE COURT: Is there anything else?

MR. IPPOLITO: There was one word at the beginning where your Honor noted that we, too, can use these tapes?

THE COURT: That is right.

MR. IPPOLITO: And our assigns?

THE COURT: That is right. That is understood. What name do you use, Mr. Eichler?

MR. EICHLER: Eichler Record Corp.

THE COURT: When you assign them they are not to be used under the name of Eichler Record Corp.

MR. FORMAN: This is off the record.

(Whereupon there ensued a discussion which was off the record.)

THE COURT: It is understood between the parties that the tapes now in the possession of the defendants and owned by Treasure Records, Inc.,

are not to be assigned by Treasure Records, Inc., but to stay in the corporation.

It is further understood and agreed that the plaintiff may sell or assign the Whitehall Tapes (those he purchased from Whitehall and the subject of this law suit), but under those circumstances he is to notify the purchaser that Treasure Records, Inc., has a duplicate set of these tapes, but Treasure Records, Inc., is not empowered to sell them.

It is further understood and agreed that Treasure Records, Inc., may use these tapes and produce records with them but they are not empowered to sell or dispose of those tapes or assign them.

It is also understood that the plaintiff, upon the sale of these tapes, or upon a sale of the records, will notify the purchaser that he is obligated to pay royalties to the composer and author, Marion Rosette.

Is there anything else?

- Stipulation -

MR. IPPOLITO: No, your Honor.

MR. FORMAN: No, your Honor.

THE COURT: All right.

(Whereupon the proceedings were terminated.)

I hereby certify that the foregoing is a true and correct transcript of the stipulation of settlement entered this day, December 14th, 1960, in the matter of Eichler Record Corp. v. Junior Records, Inc., etc.

R. F. Foy

Raymond F. Foy, C.S.R.
Official Court Reporter.

DEFENDANTS' EXHIBIT I-Id. - CHART

DEFENDANT'S

DEFENDANT'S
EXHIBIT
U. S. DIST. COURT
E. D. OF N. Y.

	1	5/12/49	1/24/49 (2)	1/25/61	✓
	2	5/12/49	1/24/49 (2)	1/25/61	✓
	3	5/12/49	1/24/49 (2)	1/25/61	✓
	4	5/12/49	2/15/49 (2)	1/25/61	✓
	5	5/12/49	2/15/49 (2)	1/25/61	✓
	6	5/12/49		1/25/61	✓
	7	5/12/49	2/15/49 (2)	1/25/61	✓
	8	5/12/49		1/25/61	✓
	9	5/12/49	2/17/49	1/25/61	✓
	10	5/12/49	2/15/49 (2)	1/25/61	✓
	11	5/12/49	2/15/49 (2)	1/25/61	✓
	12	5/12/49	1/24/49 (2)	1/25/61	✓
	13	5/12/49	2/15/49 (2)	1/25/61	✓
	14	5/12/49		1/25/61	✓
	15	5/23/49		1/25/61	✓
	16	5/12/49	1/24/49 (2)	1/25/61	✓
	17	5/12/49	2/15/49 (2)	1/25/61	✓
	18+19	12/23/64	8/24/51 (J)	2/9/65	✓
	20	5/12/49		1/25/61	✓

Defendants' Exhibit I-id. - Chart

		21	9/13/[illegible]		2/17/49 (2)	1/25/61
		22	9/13/[illegible]		2/17/49 (2)	1/25/61
		23	11/3/51		5/5/49 (2)	1/25/61
		24	9/13/49		1/24/49 (2)	1/25/61
		25, 26	12/31/63	*	6/5/52 (J)	3/2/64
		27, 28	9/13/63	*	8/16/51 (J)	12/2/63
		29, 30	5/4/62	*	9/30/48 (2)	12/2/63
		31, 32	12/23/61	*	8/17/51 (J)	2/[illegible]/65
		33, 34	5/14/62	*	8/16/51 (J)	12/2/63
		35, 36	[illegible]		8/4/51 (J)	1/[illegible]/63
		37, 38	12/[illegible]/61	*	6/5/52 (J)	3/[illegible]/64
		39, 40	[illegible]		[illegible]	[illegible]
		41	[illegible]		[illegible]	[illegible]
		42	5/1		[illegible]	[illegible]

DEFENDANTS' EXHIBIT J-1d. - COMPLAINT, ANSWER AND REPLY IN THE SUPREME COURT ACTION OF EICHLER CORP.

J

1D

COURT : NEW YORK COUNTY

----------x

Eichler RECORD CORP.,

Plaintiff,

-against-

JUNIOR RECORDS, INC., MARION ROSETTE, GEORGE A. ROSETTE, LINCOLN RECORDS, INC. and TREASURE RECORDS, INC.,

Defendants.

----------x

Plaintiff above named, by its attorney LOUIS N. FORMAN, complaining of the defendants, alleges as follows:

FIRST: That at all times hereinafter mentioned, plaintiff was and still is a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York.

SECOND: That at all times hereinafter mentioned, the defendants JUNIOR RECORDS, INC., LINCOLN RECORDS, INC. and TREASURE RECORDS, INC., were and still are domestic corporations duly organized and existing under and by virtue of the laws of the State of New York.

THIRD: That at all times hereinafter mentioned, the defendants MARION ROSETTE and GEORGE A. ROSETTE, were and still are natural persons residing in the City and State of New York.

FOURTH: That upon information and belief, the defendant MARION ROSETTE and/or GEORGE A. ROSETTE, were and still are officers, directors and/or stockholders of the defendant JUNIOR RECORDS, INC. and in the management and control of the operations and functions of the said defendant corporation.

MITS

ITS

ITS

TO"FOURTH",

FTH" and

XTH" DENIES

EPT ADMITS

Defendants' Exhibit J-id. - Complaint, Answer and Reply in the Supreme Court Action of Eichler Corp.

FIFTH: That upon information and belief, the defendant MARION ROSETTE and/or GEORGE A. ROSETTE, were and still are officers, directors and/or stockholders of the defendant LINCOLN RECORDS, INC. and in the management and control of the operations and functions of the said defendant corporation.

SIXTH: That upon information and belief, the defendant MARION ROSETTE and/or GEORGE A. ROSETTE, were and still are officers, directors and/or stockholders of the defendant TREASURE RECORDS, INC. and in the management and control of the operations and functions of the said defendant corporation.

SEVENTH: That on or about the 2nd day of March, 1953, the defendants JUNIOR RECORDS, INC. and/or GEORGE A. ROSETTE and/or MARION ROSETTE entered into an agreement with Whitehall Mercantile Corporation whereby certain master records and tapes were pledged to Whitehall Mercantile Corporation, granting the said Whitehall Mercantile Corporation the right to take and remove all of the property so pledged in the event of any default on the part of the said JUNIOR RECORDS, INC. and/or GEORGE A. ROSETTE and/or MARION ROSETTE and the right of sale thereof at public or private sale.

EIGHTH: That such pledge included all of the master records and tapes purporting to be the existing catalogue of JUNIOR RECORDS, INC.; 625 metal masters and mothers; stampers; and all lithographed sleeves associated with such records.

NINTH: That thereafter and prior to April of 1955, the said Whitehall Mercantile Corporation duly foreclosed its lien upon such property so pledged and secured good and valid title thereto free and clear of any lien or encumbrances on the part of any person, firm or corporation including the defendants herein.

Defendants' Exhibit J-id. - Complaint, Answer and Reply in the Supreme Court Action of Eichler Corp.

TENTH: That on or about the 21st day of April, 1955, one AARON EICHLER purchased for good and valuable consideration all of the aforesaid property, including the right to the use thereof, from the Whitehall Mercantile Corporation.

ELEVENTH: That thereafter the said AARON EICHLER duly assigned, setover and transferred unto plaintiff herein, for good and valuable consideration, all of his right, title and interest in and to said contract of purchase with Whitehall Mercantile Corporation as aforesaid.

TWELFTH: That plaintiff is now the sole and exclusive owner of the aforesaid songs and records consisting of the catalogue of JUNIOR RECORDS, INC.; 625 masters and mothers; all stampers and sleeves therefor including the right to the use thereof, the art work and associated descriptive material and identification relating thereto.

THIRTEENTH: That since the purchase of the aforesaid, plaintiff has continued the manufacture, production and sale of records secured from such master tapes and has continued to expend divers sums of money in connection therewith.

FOURTEENTH: That the plaintiff and its predecessors have expended large sums of money in designing, creating, advertising and publicizing such records used in their business and have in connection therewith employed various means of identifying such products for the purpose of distinguishing them from those of other manufacturers and for the purpose of identifying same as its products and have adopted names and/or trade marks and distinctive art associations in connection with such products.

FIFTEENTH: That such characteristics, trade marks, names and other descriptive material have become and are widely and generally known to the

Defendants' Exhibit J-id. - Complaint, Answer and Reply in the Supreme Court Action of Eichler Corp.

trade and the purchasing public and are of extreme value to the plaintiff and a very valuable part of plaintiff's business of all of which the defendants and each of them had and have enjoyed at the time of the acts hereinafter complained of.

SIXTEENTH: That one of the primary inducements of the plaintiff and its assignor in purchasing the said property and the right to the use thereof as aforesaid, was the value of the said trade names, descriptive material and other distinguishing characteristics as above indicated.

SEVENTEENTH: That upon information and belief all of the defendants have manufactured, produced, offered for sale and distributed divers records which are the property of the plaintiff and have offered the same to the general purchasing public under trade marks, names and distinguishing features similar and/or identical to those offered by the plaintiff of which plaintiff is the sole owner.

EIGHTEENTH: That in many instances such records were and are exact duplicates of those owned by the plaintiff and taken directly from the master tapes, or copies thereof, owned by the plaintiff.

NINETEENTH: That in many instances such records contained and were and are used in sleevings which are similar or exact duplicates of those owned by the plaintiff as aforesaid.

TWENTIETH: That in many instances such records offered by the defendants contained and were and are identified with similar or exact art work and other distinctive material associated with the records of the plaintiff.

TWENTY-FIRST: That in many instances such records were and are offered by the defendants under the same or similar catalogue numbers and other

Defendants' Exhibit J-id. - Complaint, Answer and Reply in the Supreme Court Action of Eichler Corp.

similar and distinctive means of identification.

TWENTY-SECOND: The defendants and each of them, individually and in conspiracy with each other, have offered such records as aforesaid to the purchasing public for the purpose of injuring the plaintiff and for the purpose of deceiving, misleading and imposing upon and confusing the customers and patrons of the plaintiff and the public in general and have deprived the plaintiff of its trade and obtained the benefit of plaintiff's reputation, goodwill, publicity and advertising.

TWENTY-THIRD: That upon information and belief, large numbers of the purchasing public have been confused and deceived by the wrongful acts of the defendants and each of them individually and in conspiracy with each other and in believing that the defendants' products are those of the plaintiff.

TWENTY-FOURTH: That prior to the commencement of this action, plaintiff duly made demand upon the defendants to cease such unlawful acts and desist from the use of plaintiff's property as aforesaid but the said defendants have failed and refused so to do and now are continuing such use and threaten so to do in the future.

TWENTY-FIFTH: That plaintiff has no adequate remedy at law.

TWENTY-SIXTH: That by reason of the facts and circumstances hereinabove set forth, plaintiff has been and now is and will continue to be hindered, impeded and unlawfully interfered with by the said defendants in their wrongful use of said plaintiff's property as aforesaid and the said plaintiff will be damaged irreparably in money and reputation.

Defendants' Exhibit J-id. - Complaint, Answer and Reply in the Supreme Court Action of Eichler Corp.

WHEREFORE, plaintiff demands judgment against the defendants:

1. That the defendants be enjoined and restrained from the use of any tapes or copies thereof of which plaintiff is the owner.

2. That the defendants be enjoined from manufacturing, producing and offering for sale any records from said tapes.

3. That the said defendants be enjoined from manufacturing, producing or offering for sale any records duplicating those owned by the plaintiff herein.

4. That the defendants be enjoined from the use of any of the distinctive features, trade names, titles and art work owned and employed by the plaintiff herein.

5. That the defendants be enjoined from the use of catalogue numbers, names and/or combinations of records similar to those owned and offered for sale by the plaintiff.

6. That the defendants account for the profits unlawfully made by them and each of them from the use of plaintiff's property and be directed to pay the same to the plaintiff.

7. That the plaintiff recover its damages and costs against the defendants.

8. That the plaintiff have such other and further relief against the defendants and each of them as may be just and proper.

LOUIS N. FORMAN
Attorney for Plaintiff
Office & P.O.Address
701 Seventh Avenue
New York 36, N.Y.

Defendants' Exhibit J-id. - Complaint, Answer and Reply in the Supreme Court Action of Eichler Corp.

SUPREME COURT : NEW YORK COUNTY

- -x

EICHLER RECORD CORP.,

Plaintiff,

-against-

JUNIOR RECORDS, INC., MARION ROSETTE, GEORGE A. ROSETTE, LINCOLN RECORDS, INC., and TREASURE RECORDS, INC.,

Defendants.

- -x

The defendants, for their answer, allege:

1. Deny the allegations of the complaint set forth in paragraphs FOURTH, FIFTH and SIXTH, except admit GEORGE A ROSETTE is still an officer of Treasure Records, Inc.

2. Deny the allegations of paragraph SEVENTH, except admit the agreement with Whitehall Mercantile Corporation.

3. Deny the allegations of paragraph EIGHTH, NINTH, TENTH, TWELFTH, THIRTEENTH, SEVENTEENTH, EIGHTEENTH, TWENTY-SECOND, TWENTY-THIRD, TWENTY-FOURTH, TWENTY-FIFTH and TWENTY-SIXTH.

4. Deny knowledge or information of the allegations of Paragraphs ELEVENTH, FOURTEENTH, FIFTEENTH, SIXTEENTH, NINETEENTH, TWENTIETH, TWENTY-FIRST.

Defendants' Exhibit J-id. - Complaint, Answer and Reply in the Supreme Court Action of Eichler Corp.

FOR A COUNTERCLAIM

The defendant, MARION ROSETTE, ALLEGES:

DENIES

5. The plaintiff has not paid royalties to her as the composer and author of the compositions used by it, and plaintiff is subject to penalties and the forfeiture of any alleged right to said compositions.

WHEREFORE, the defendants demand judgment dismissing the complaint, and for judgment on the counterclaim, as well as the costs and disbursements of this action.

FRANK L. IPPOLITO
Attorney for defendants
152 West 42nd Street
New York 36, New York

LOUIS N. FORMAN
Attorney for Plaintiff
701 Seventh Ave., NYC

Defendants' Exhibit J-id. - Complaint, Answer and Reply in the Supreme Court Action of Eichler Corp.

- -x

EICHLER RECORD CORP.,

Plaintiff,

-against-

JUNIOR RECORDS, INC., MARION ROSETTE, GEORGE A. ROSETTE, LINCOLN RECORDS, INC., and TREASURE RECORDS, INC.,

Defendants.

- -x

The plaintiff, for its reply alleges:

FIRST: Denies each and every allegation in the paragraph designated "5" in the counterclaim of the defendant, MARION ROSETTE.

WHEREFORE, plaintiff demands judgment for the relief requested in the complaint and for a dismissal of the counterclaim, together with the costs and disbursements of this action.

LOUIS N. FORMAN
Attorney for Plaintiff
Office & P.O.Address
701 Seventh Avenue
New York 36, N.Y.

TO:

FRANK L. IPPOLITO, Esq.
Attorney for Defendants
Office & P.O.Address
152 West 42nd Street
New York 36, N.Y.

DEFENDANTS' EXHIBIT M-id. - AGREEMENT OF SALE BETWEEN EICHLER AND TABACK 354a-12

AGREEMENT OF SALE

ID

This agreement is entered into on April 20, 1960, ty and State of New York between AARON EICHLER of 81[illegible] Broadway, New York, New York, hereinafter referred to as "EICHLER", and SID TABACK of 2540 West Pico Boulevard, Los Angeles, California, hereinafter referred to as "TABACK",

W I T N E S S E T H :

WHEREAS, EICHLER represents that he has sole right and title to the WONDERLAND RECORD CO. which catalogue consists of ninety-six (96) songs; and LYRIC RECORD CO. which catalogue consists of thirty-six (36) songs including all sleeves for the 10" and 45 R P M records now on the premises, all available process, metal, parts, trade names, and trade marks used in connection with the aforementioned records; and

WHEREAS, TABACK represents that he is engaged in the business of pressing records and produces 12" monaural long-playing records and 12" stereo long-playing pure-vinyl records:

NOW, THEREFORE, it is mutually agreed as follows:

1. That TABACK agrees to purchase from EICHLER and EICHLER agrees to sell to TABACK all of the above-mentioned property for the sum of ten thousand dollars ($10,000.00), which sum shall be paid by TABACK by granting to EICHLER a twenty-five percent (25%) discount on records ordered from TABACK by EICHLER;

2. EICHLER agrees to order from TABACK and TABACK agrees to press and sell to EICHLER 12" monaural long-playing records at an agreed price of thirty-two cents (32¢) per record as per sample record submitted and 12" stereo long-playing pure vinyl records at an agreed price of thirty-seven cents (37¢) per record for the ESOTERIC and COUNTERPOINT RECORD CO. EICHLER will pay a

sum equal to seventy-five percent (75%) of the total of invoices rendered and the remaining submitted for the above, and twenty-five percent (25%) shall be credited on the ten thousand dollar ($10,000.00) purchase price as aforesaid. Payment to be made within ten days after the end of the month in which EICHLER is invoiced:

3. This contract is to remain in full force and effect until a credit of ten thousand dollars ($10,000.00) shall be received by EICHLER;

4. EICHLER will submit written orders to TABACK to press and ship the above-mentioned records;

5. That in the event of any change of ownership of ESOTERIC and COUNTERPOINT RECORD CO., of which EICHLER is presently the sole owner, either by sale thereof to another in whole or by sale thereof in part to a partner, EICHLER shall have the right to demand and TABACK upon such notification from EICHLER, agrees to pay EICHLER in full any balance due not to exceed five thousand dollars ($5,000.00) for the property purchased from EICHLER in equal monthly installment payments for a maximum of eighteen (18) months from the date of this contract;

6. That TABACK agrees not to assign, sell, rent, incumber, alienate or in any manner divest himself of any part of absolute right and title to the tapes or any material belonging or used in connection with the property purchased by him from EICHLER until full payment for all the property herein purchased has been received by EICHLER unless otherwise authorized in writing by EICHLER, except that he may transfer his interest in such personal property to a corporation or partnership in which he owns a substantial interest;

7. That this contract shall go into effect upon the signing thereof to be binding on both parties until the fulfillment of all terms contained herein unless there shall be executed

a written release mutually releasing the parties of any part or parts of this contract.

IN WITNESS WHEREOF, each of the parties hereto has hereunto set their hands and seals the day and year first above written.

AARON EICHLER

SID TABACK

OPINION OF GURFEIN, D.J. (Filed February 27, 1973)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

39247
Copy

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MARICH ROSNYR,

Plaintiff,

-against-

66 Civ. 3864

RAINBO RECORD MANUFACTURING CORPORATION and HAROLD E. MARKOWITZ and JACK BROWN doing business as RAINBO RECORD COMPANY, a partnership,

Defendants.

----------x

FILED
U.S. DISTRICT COURT
FEB 27 9 15 AM '73
S.D. OF N.Y.

APPEARANCES

ZISSU, MARCUS & STEIN
Attorneys for Plaintiff
New York, New York

HOVER, RICH & GRUBMAN
Attorneys for Defendants
New York, New York.

GURFEIN, D. J.

The plaintiff in this action is the composer of children's songs which were either adapted by her from classic children's nursery rhymes or were original compositions. In her 42 count complaint she charges that the defendants infringed her copyrights by manufacturing and selling records containing thirty-three (33) compositions. Thirty-three counts are premised on

statutory copyright claims; the remaining nine (Counts 19, 26, 28, 30, 32, 34, 36, 38 and 40) charge common law copyright infringements. Jurisdiction is alleged generally under 17 U.S.C. §1 et seq. and under 28 U.S.C. §1338(b). The plaintiff seeks injunctive and monetary relief, including treble damages and attorneys' fees.

The defendants deny that they have infringed the plaintiff's alleged statutory or common law copyright as set forth in the complaint. The defendants further contend, inter alia, that they are not proper defendants in this suit since Rainbo was merely a record presser and not a "manufacturer" within the meaning of 17 U.S.C. §1(e).

The defendants seek dismissal of twenty counts on the ground of prior publication.[1/] Nine of these are the common law counts and eleven are statutory copyright claims. Dismissal is sought of two counts, 41 and 42, on the ground that the plaintiff has failed to show ownership of the copyrights involved. The remaining eleven counts and all the other counts as well are said to be time barred by limitation and because the plaintiff allegedly failed to file notices of use until after the alleged infringements had occurred.

A trial was held to the Court on October 10-11, 1972.

FACTS

The plaintiff is a graduate of the Peabody Conservatory and a member of ASCAP. In 1949 she formed Lincoln Records Co., a corporation wholly owned by herself and her husband. The plaintiff testified at the trial and was the only witness on her behalf. Mrs. Rosette is the composer of the thirty-three

compositions here at issue. The schedule showing the count of the complaint, the date of the copyright, the first recording date and the filing date of notice of use is set forth in the margin.2/

THE DEFENSE OF PRIOR PUBLICATION

The plaintiff admitted in her testimony that the compositions Chicken Licken (count 13); Pussy Cat, Pussy Cat (counts 18 and 19; Jack and the Beanstalk (count 23); Pinocchio (counts 25 and 26; Mary had a Little Lamb (counts 27 and 28); Ding Dong Bell (counts 29 and 30; Fiddle Dee Dee (counts 31 and 32; Goosy Goosy Gander (counts 33 and 34); Where has my Little Dog Gone (counts 35 and 36; Alice in Wonderland (counts 37 and 38; and Old King Cole (counts 39 and 40) were recorded, manufactured and continuously sold by the plaintiff and her company for many years before the plaintiff or her company obtained a statutory copyright of the compositions. Phonograph records of Chicken Licken and Jack and the Beanstalk were sold to the general public approximately one and one-half years before the date on which the copyrights were obtained, and the copyrights for Pinocchio, Mary had a Little Lamb, Ding Dong Bell, Fiddle Dee Dee, Goosy Goosy Gander, Where has my Little Dog Gone, Alice in Wonderland and Old King Cole, were obtained between ten and thirteen years after the recordings of these compositions

were sold throughout the United States by the plaintiff and her companies. As to the other compositions whose recording date she recalled, the plaintiff testified that the recordings were not released until after the copyright registration had been secured. With respect to the compositions Old Mother Hubbard (count 5), Hobbledy Horse (count 8), The Weez Wump (count 14), The Pied Piper (count 15) and Little Red Hen (count 20), she could not recall the dates of recording but she believed that there could have been no prior publication of these compositions since it was her practice to register her compositions prior to their release on phonograph records. The defendants introduced no proof of prior sale of phonograph records with respect to any of the counts except those conceded by the plaintiff in her own testimony.

THE ALLEGED INFRINGEMENT

The plaintiff introduced into evidence fourteen long playing records and testified that she had purchased them about December 1964, give or take one year. According to Mrs. Rosette the Playtime Albums numbered 106, 107, 108, 109, 111, 112, 116, 117 and 118 and the Carousel Albums numbered 806, 807, 808 and 812 contained exact duplications of her compositions which are the subject of this action and were in fact the same mechanical

reproductions which she had authorized earlier. She testified that the names of the songs on these albums had been varied slightly in some cases.

The plaintiff also introduced the Schwann Long Playing Record Catalog for 1964 which enters records "only on authority of written or printed information sent to us by the manufacturer." That catalog listed for sale the Playtime albums numbered 106, 107, 108, 109, 111 and 112 referred to above.

The defendant Jack Brown is President of the defendant Rainbo Record Manufacturing Corporation. Together with the defendant Harold Markowitz he had formed the partnership Rainbo Record Company, also a defendant. Brown was the sole witness called by the defendants.

Brown testified that the Rainbo partnership was dissolved in the late 1940s and that he and Markowitz have not conducted business since that time. The Rainbo Company, the partnership, was engaged in a business different from that of Rainbo Manufacturing Corporation. There is no evidence linking Markowitz or the partnership to the alleged acts of infringement.

Rainbo Record Manufacturing Corporation (hereinafter "Rainbo") was engaged in the business of pressing records. Among its

customers was a Sidney Taback who did business under the name of Lyric Records. Lyric Records had previously been a partnership consisting of Mr. Brown, Mr. Taback and Selig J. Smith. The partnership was dissolved in February 1963 but Taback continued using the name Lyric.

Brown testified that Lyric and Rainbo were not related companies and that neither he nor Rainbo had any interest in the records pressed for Taback. He related that Lyric supplied Rainbo with the metal components, labels and jackets for the pressing of albums done by Rainbo for Lyric, and that upon completion of the order Taback would retrieve the stamping parts, occasionally even picking them up in person.

The plaintiff established that during the years 1962, 1963, 1964, 1965 and 1966 Rainbo and Lyric (or Playtime-Lyric) shared the same telephone numbers and were listed in the Los Angeles telephone directory as having the same address. In 1963 Brown had moved his place of business from Lawndale, California to North Las Palmas in Hollywood; and the telephone directory indicates that Lyric also moved that same year to the same address and telephone number. The plaintiff also introduced into evidence a letter addressed by the plaintiff's attorney to"Playtime Records Inc." dated May 17, 1966 (Ex. 14)

making a claim of infringement of the compositions in suit and listing the offending albums as bearing the names "Carousel" and "Playtime." A return receipt was requested. A return receipt was signed "J. G. Brown" dated May 19, 1966. Though Brown refused to acknowledge that the signature on the return receipt was his, he did admit answering the letter from the plaintiff's attorney. His reply dated June 16, 1966 was written on the letterhead of Rainbo Records (the very addressee of the letter) and it was signed "Jack G. Brown."

The plaintiff contends that this reply to plaintiff's infringement claims constitutes an admission by Brown that Rainbo was related to Lyric, Carousel and Playtime Records and that, in fact, Rainbo had purchased the Carousel and Playtime line of songs from Lyric. The letter reads:

> "This is to advise you that the Carousel and Playtime Record line has been inactive for two years.
>
> We may reactivate the line through Ed Chaplin of PPX, with whom I am sure you are familiar.
>
> We would like to see your contracts regarding the works you refer to inasmuch as we have a 'hold harmless' agreement when we purchased the entire catalogue."

The defendants deny that the letter constitutes an admission because many of the plaintiff's copyrighted songs bear titles of classic children's nursery rhymes and while the plaintiff obtained copyrights to her songs because of her adaptation, arrange-

ment and lyrics, others had the right to the same titles with different musical compositions. In sum, it is contended that Brown could not determine which were the plaintiff's compositions without actually listening to them in any event, and since he had not listened to the plaintiff's recordings he could not have made an admission that the recordings in the Carousel and Playtime albums were the same.

I find the explanation a bit disingenuous. The explanation does not satisfactorily rebut the circumstantial evidence showing the common control of Lyric or Playtime-Lyric and Rainbo. Nor does it rebut the inference that Brown, i.e. Rainbo, could reactivate "the Carousel and Playtime Record line" whenever he felt like doing so. The further admission in the Rainbo letter that "we have a 'hold harmless' agreement when we purchased the entire catalogue" (emphasis supplied) assumes the responsibility for infringement if it exists and incidentally belies the claim now asserted that Rainbo was only a "presser" of records, not a manufacturer or a distributor. In the light of the circumstantial evidence I cannot credit Brown's unsupported testimony that Rainbo was only a "presser," that the only record containing the plaintiff's compositions was Playtime Album 106, and that the Playtime and Carousel record line were only pressed to the middle of 1960.

His letter of June [illegible], 1966 speaks of the Carousel and Playtime record line as having been "inactive for two years," i.e. since the middle of 1964. His knowledge of when the Carousel and Playtime record line became inactive is evidence of a more intimate knowledge that Brown now admits. And the juxtaposition of the extrapolated date of 1964 in the letter and the testimony of Mrs. Rosette is of some significance. She put in evidence fourteen long playing records (Exs. 11 and 11a) and testified that Playtime record 112 (Ex. 11a) was purchased by her on December 22, 1964, the sales slip of Liberty Records being Exhibit 12. The thirteen phonograph records which constitute Exhibit 11 were all purchased within six months to a year earlier. The Schwann Long Playing Record Catalog for December 1964 lists as available for sale Playtime Albums Nos. 112, 101, 109, 105, 107, 106, 111, 104 and 108 in that order.

The plaintiff testified that she listened to each of the fourteen records she had purchased, compared them with her compositions and found that each embodies exact duplications of her compositions in the exact mechanical reproductions she had authorized. She testified that in some instances the titles had been slightly changed on the infringing albums. I credit her testimony.

Although Brown based his failure to present books in support of his "pressing" activities on flood damage, he failed to assert that reason when his deposition was taken on August 26, 1969.[3/]

I find as a fact that there was infringement by the defendants Rainbo and Brown of the plaintiff's compositions which are the subject of suit.

Despite Brown's testimony, I find that Rinbo was in fact the pressor of the records containing the allegedly infringing compositions; that Rainbo did purchase the Carousel and Playtime catalogs; that Rainbo and Lyric were closely related; that the two corporations shared the same mailing address and telephone number and conducted business through such shared address; and that Rainbo and Lyric did act in concert in the conduct of business.

The defendants raise an important issue, however, which has intrigued the law professors: whether the distribution of phonograph records without copyright registration is a publication that results in a loss of the common law copyright in the unpublished composition and is a dedication of the musical composition to the public.

Under the Copyright Law when a copyrighted work is reproduced mechanically it is protected, 17 U.S.C. §1(e), and

unauthorized manufacture, sale or use constitutes infringement of the copyright (17 U.S.C. §101(a)). The Copyright Law also saves to the author or proprietor of an unpublished work the right, at common law or in equity, to prevent the copying, publication or use of such unpublished work without his consent and to obtain damages therefor (17 U.S.C. §2).

The effect of the Copyright Act is "to secure to the author of a copyrighted play the sole right of its performance after it had been printed" Ferris v. Frohman, 223 U.S. 424, 435 (1912). This applies to a musical composition as well. See Kaplan, Publication in Copyright Law, 103 U.Pa.L.Rev. 469, 473 (1955).

Thus, so long as the work is unpublished the author retains common law rights in the composition, including the sole right of its performance. On the other hand, if the author chooses to publish the work without meeting the requirements for statutory copyright he will lose his common law protection. See National Comics Publications v. Fawcett Publications, 191 F.2d 594 (2 Cir. 1951).

Here the plaintiff did not publish some of her musical compositions as sheet music for sale to the public. She kept some of her musical manuscript in unpublished form but she, nevertheless, authorized the mechanical reproduction of such

unpublished compositions on phonograph records. If she had lent an original manuscript to an orchestra for performance without publishing it as sheet music she would have retained her common law rights. See Mills Music v. Cromwell Music, 126 F.Supp. 54 (S.D.N.Y. 1954); Patterson v. Century Productions, 93 F.2d 489 (2 Cir. 1937). If she had published her composition as sheet music without getting statutory copyright protection she would have lost her rights in its performance. The question is whether the mechanical reproduction on a phonograph record of an otherwise unpublished composition itself constitutes publication so as to divest the author of common law rights.

The plaintiff contends that it is not publication but performance of an unpublished work. The defendants argue that the phonograph record is a copy of the composition and is also a publication because it is perpetuated and is not ephemeral like a stage performance.

On this modern version of a scholastic dialogue the law professors enjoy the disputation, but the judicial process must resolve the dispute one way or the other. See e.g. Kaplan, supra; Nimmer on Copyright §§50.1-50.2; also Tannenbaum, "Practical Problems in Copyright, in Seven Copyright Problems Analyzed" (CCH 1952); Schulman "Authors Rights" Id. at 19; Burton, "Business Practices In the Copyright Field," Id. at 87.

The familiar tools of statutory construction, of precedent and its ratio decidendi, of the weight to be accorded stare decinis and of the vaguer notions of public interest in the face of claims to monopolize, all come into play. On the one hand there is distaste for the perpetual monopoly that sustaining common law rights unlimited in time involves. On the other, there is a strong reaction that precedent should be reliable rather than a trap for the unwary, particularly in a technical field where the lawyers, assumed to be learned, guide the hand of the untutored artist.

It may be noted, incidentally, that the Universal Copyright Convention (UCC) to which the United States is a party has clearly eliminated mechanical production on phonograph records as "publication." The Convention in Article VI defines publication as "the reproduction in tangible form and the general distribution to the public of copies of a work from which it can be read or otherwise visually perceived." Curiously the definition was reached not so much on a theoretical basis as on the belief shared by the conference "that according to the United States law the issuance of phonograph records does not amount to publication, and that an unpublished work remains unpublished..." It was believed that a contrary provision in

the Convention would require an amendment of the United States Copyright Law unlikely to be accepted by Congress. Bogsch, Universal Copyright Convention, 83 (1958). Three of the four American delegates to the Conference in 1952 who participated in the drafting of the Convention are said to have stated the view that the sale of records is not a publication of the musical work involved.[4] And the practicing copyright bar has voiced its objection to relinquishing what they consider stare decisis so as to cast into the public domain thousands of works of popular and classical music, performances of which have been distributed on phonograph records without statutory copyright in reliance upon the rule of law that a distribution of phonograph records is not a publication.[5]

The distinction between sheet music, a literal copy of the original manuscript, and a mechanical reproduction of a musical composition originally came before the Supreme Court in the famous case of White-Smith Music Publishing Co. v. Apollo Co., 209 U.S. 1 (1908). There the Court held that a music roll for mechanical pianos did not constitute a "copy" of the recorded music and hence was not an infringement of it. From this result it was logical to conclude that if the infringing music roll was not a copy of the composition so as to cast its maker in liability, the creation of a music roll

by the author himself would not make it a "copy" of his work and hence not a publication of it. The White-Smith result can be also rationalized as an opinion that mechanical reproduction is performance, like live performance, and is, therefore, not publication. The Court noted: "As the Act of Congress now stands we believe it does not include these records as copies or publications of the copyrighted music involved in these cases." 209 U.S. at 18 (emphasis supplied). The Ninth Circuit in Corcoran v. Montgomery Ward & Co., 121 F.2d 572 (1941) seems to have specifically extended the White-Smith rule to phonograph records.

The Copyright Act was completed revised in 1909.

The impact of the White-Smith case was limited by the statutory provision in the 1909 Act that "copyright may also be had of the works of an author, of which copies are not reproduced for sale, by the deposit, with claim of copyright, of one complete copy of such work if it be a lecture or similar production or a dramatic, musical, or dramatico-musical composition" (formerly Section 11 of the 1909 Act), 17 U.S.C. §12. Thus, copyright protection was made available for unpublished musical compositions. And the sale of records of a musical composition registered under Section 12 of the Copyright Act will not terminate

its copyright protection, Yacoubian v. Carroll, 74 U.S.P.Q. 257 (S.D.Cal. 1947) against unauthorized phonograph records. Shilkret v. Musicraft Records, 131 F.2d 929(2 Cir. 1942). But the Court of Appeals has not yet had occasion to consider the protection of unpublished musical compositions which rely on common law rights against unauthorized phonograph records. Section 2 of the Copyright Act recognizes the continued validity of common law rights in an "unpublished work" and confirms the right of an author to prevent "the use of such unpublished work."

The 1909 Act was a comprehensive revis. . of the Copyright Law. As we have seen, the Supreme Court in White-Smith had previously ruled that the recordation of a musical composition by mechanical means did not make the record (piano roll) a "copy" of the composition. The drafters of the 1909 Act stated that "it is not the intention of the committee to extend the right of copyright to the mechanical reproductions themselves, but only to give the composer or copyright proprietor the control, in accordance with the provisions of the bill, of the manufacture and use of such devices." House Reports, 60th Cong. 2d Sess. Vol. 1 (1909), p. 9. The provisions of the bill referred to included the now familiar compulsory licensing provision whereunder the payment of a royalty of two cents per record anyone may use the

copyrighted composition (§1(e)). The assumption remained, however, that the musical composition itself was a thing apart from its performance ona phonograph record.

In this light the Act provided for two different protections for the unpublished musical composition itself. First, a new statutory method of copyright was provided in Section 11 for unpublished works and second, common law rights were preserved in unpublished works. It has been held, however, that an author is not compelled to resort to a Section 11 copyright to avoid forfeiture of his common law rights. Nutt v. National Institute Inc. for the Imp. of Memory, 31 F.2d 236 (2 Cir. 1929).

While that is true of the author of an unpublished manuscript it does not follow that it is also necessarily true of a composer of an unpublished composition who has chosen to make and sell phonograph records for which special provision has been made in the Copyright Act.

The Copyright Act does not define publication and it is true that generally a performance of an unpublished musical manuscript is not a publication. Frohman, supra. This accords with the expressed view of the Copyright Bar and the music industry that making a record of an unpublished composition is not a "publication." Their reliance is on accepted doctrines of copyright law.

It is small wonder then that a brief opinion by Judge Igoe in Shapiro, Bernstein & Co. v. Miracle Record Co., 91 F.Supp. 473 (N.D.Ill. 1950) raised the hackles of the Copyright Bar.[6/] Judge Igoe, by wayof dictum, expressed the view that the composer "abandoned his right, if any, to a copyright by permitting his composition to be produced on phonograph records and sold some time before copyright" (91 F.Supp. at 475). Judge Igoe apparently rejected the view that "a record is nothing but a captured performance of the composition," see Kaplan, supra, at 480 and he made no mention of White-Smith, supra.[7/]

In Mills Music v. Cromwell Music, 126 F.Supp. 54, 69-70 (S.D.N.Y. 1954) Judge Leibell considered a defense that plaintiff's assignors had "waived all rights in the musical composition and dedicated it to the public" (Id. at 57). Judge Leibell found that there was no such authorized manufacture and sale of records of "Tzena" by the plaintiff's assignors (Id. at 70). By way of dictum, however, he expressed the view that "[t]he manufacture and sale of phonograph records in this country by a person or corporation duly authorized by Miron would have constituted a publication of his composition" (Id. at 69).

In McIntyre v. Double A-Music Corporation, 166 F.Supp. 681, 683 (S.D.Cal. 1958) Judge Solomon found that the plaintiff's arrangement of a musical composition "was insufficient to qualify for either a common law or a statutory copyright." By way of dictum, Judge Solomon expressed the view that the sale to the general public of hundreds of thousands of phonograph records of his arrangement "was a general publication of plaintiff's arrangement and destroyed whatever rights he had in the arrangement under the common law of copyrights." (Id. at 682)

None of the distinguished judges cited made any reference to White-Smith or the impact of the 1909 Act on its doctrine.

In this District, Judge Cooper has expressed a contrary view, also by way of dictum, that "a phonograph record is not a copy of a musical composition...nor is the sale of the record 'a publication' of the underlying composition." Nom Music Inc. v. Kaslin, 227 F.Supp. 922, 926 (S.D.N.Y. 1964), aff'd on other grounds, 343 F. 2d 198 (2 Cir. 1965).

This leaves us with the conviction that higher judicial authority has not passed directly on the point. It has remained since 1909 a bone of contention between the Copyright Bar and some of the law professors.

Section 2 of the Copyright Act was reenacted at the same time that phonograph recordings were themselves a current subject

of debate. It would have been simple to carve out an exception to the protection of unpublished musical compositions for the production and sale of phonograph records otherwise covered by Section 1 and Section 11. This was not done.

The questions nevertheless confront us (1) whether the 1909 Act overruled White-Smith and made a phonograph record a "copy" or a "publication," and (2) whether the special statutory scheme involving phonograph records is a gloss on the scope of Section 2 of the Act.

With regard to the first question it is difficult to rationalize accepted principles of copyright law to make performance of a composition a publication of the composition itself. The argument that the permanency of the recording makes it more than a mere performance is an argument that the Congress did not accept or it could easily have made such an enactment. And the Copyright Office held that the phonograph record itself may not be registered under Section 11. C.F.R. 202.8(b).[8/]

The difficult second question still remains. The common law right in the unpublished composition makes no requirement of notice of use of the musical composition on phonograph records by the composer or the copyright owner as is required under Section 1(e) where a statutory copyright has been obtained. This

puts the statutory copyright owner at an apparent disadvantage, for if the statutory copyright owner fails to file his ntice in the Copyright Office "any failure to file such notice shall be a complete defense to any suit, action or proceeding for any infringement of such copyright." (§1(e)) Can the States by virtue of the common law constitutionally impose a lesser requirement when copyright has been vested by the Constitution in the national Government? Must the impediments to the free exercise of the statutory copyright be held to limit the exploitation of the common law copyright to the same degree? A statutory construction that avoids a constitutional problem is desirable.

Judge Learned Hand, dissenting in Capitol Records, supra, had expressed misgivings about the power of the States "to follow their own notions as to when an author's rights shall be unlimited both in user and in duration" 221 F.2d at 667 (emphasis supplied). Judge Hand's prophecy of 1955 became law in 1964 when the Sears-Compco doctrine was announced by the Supreme Court. In Sears, Roebuck & Co. v. Stiffel Company, 376 U.S. 225 and in Compco Corp. v. Day-Brite Lighting, Inc., 376 U.S. 234 (1964), the Court held that aState may not prohibit the copying of an article unprotected under the Federal patent laws. Justice Black, relying on the Supremacy Clause stated, "Just as a State cannot encroach upon the federal patent laws directly, it cannot,

under some other law, such as that forbidding unfair competition, give protection of a kind that clashes with the objectives of the federal patent laws." 376 U.S. at 231.

One might still have supposed that copyright law is different from patent law because Section 2 of the Copyright Act specifically recognizes common law rights which are State created rights. But the distinction is apparently not to be made. For Justice Black in the Compco case made it explicit that "Today we have held in Sears, Roebuck & Co. v. Stiffel Co., [more], that when an article is unprotected by a patent or a copyright, state law may not forbid others to copy that article. To forbid copying would interfere with the federal policy, found in Art. I, §8, cl. 8, of the Constitution and in implementing federal statutes, of allowing free access to copy whatever the federal patent and copyright laws leave in the public domain." 376 U.S. at 237 (emphasis supplied)

The failure of a copyright owner to file his notice of use in effect puts his composition into the public domain--at least from the time of use to the date of filing. Norbay Music, Inc. v. King Records, Inc., 290 F.2d 617 (2 Cir. 1961). Cf. Biltmore Music Corp. v. Kittinger, 238 F.2d 373 (2 Cir. 1956). During such time it would seem that granting protective rights under State

law would be inconsistent with the Congressional policy of requiring notice by copyright owners to would-be users so that they in turn may protect themselves under the two-cent royalty provision by paying the royalty to the copyright owner (§§1(e)1 101(e)).

To avoid the constitutional problem I think that the exception of Section 2 of the Copyright Law must be limited to exclude the sale of phonograph records from the protection given to the owner of an unpublished manuscript to the extent that the common law right exceeds the rights of statutory copyright owners. The conditions for use of the musical composition on phonograph records are so well defined in the comprehensive Copyright Act of 1909 that it is unlikely that the Congress intended that contradictory principles of State law should survive.[9/]

This leads to the conclusion that the use of phonograph records without compliance with the Copyright Act bars claims for infringement not because the record is a "copy" or a "publication," but because any other interpretation leads to conflict with the Federal statutory scheme. Section 2 would still be read as applying to unpublished works protectible at common law including unpublished musical compositions where no

mechanical recordings have been made.

On the other hand the failure to file notice of use does not bar the copyright owner forever, Norbay, supra. By analogy then I hold that the sale of phonograph records is not a divestment of common law rights by publication but that it does inhibit suit against infringers until the statutory copyright is obtained and the notice of use is filed. Thereafter, applying the rule of Norbay, the statutory copyright owner may sue for subsequent infringement. This provides an accommodation to basic copyright store decisis in preventing the loss of rights in the "unpublished" composition by an unintended dedication to the public while preserving the supremacy of the federal copyright law and effecting its policy.

Applying this ruling to the facts, I find that the plaintiff may recover but only from the dates of her filing the respective notices of use.

OWNERSHIP OF THE COPYRIGHTS

The authorship, originality and copyrightability of the compositions are undisputed. The plaintiff has introduced the copyright certificates for all thirty-three compositions in question and has thereby made out a prima facie case of the facts stated therein, 17 U.S.C. §209. The defendants claim, however, that Mrs. Rosette is not the proprietor of the copyrights which

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are the subject of counts 41 and 42, namely, Mother Goose Party and Katie the Kangaroo.

The copyright certificates indicate that Peer International Corp. and Paull-Pioneer Music Corp. were the original copyright claimants for Mother Goose Party and Katie the Kangaroo, respectively. On July 26, 1955 Peer International reassigned to Lincoln records "all rights to Mother Goose Party subject to our ownership hereto." Lincoln had already assigned "our right, title and interest in and to the copyrights and all other rights we may have in" Mother Goose Party (along with 49 other compositions) to Mrs. Rosette on October 22, 1951. The defendants present two arguments. First, that since Peer's reassignment was "subject to our ownership hereto" Peer remained the copyright owner and no assignment of Mother Goose Party was ever effected. Second, because Lincoln's assignment of Mother Goose Party preceded Peer's reassignment to Lincoln of the copyright to that composition, plaintiff never became the proprietor of the copyright.

The defendants misconstrue the contracts in question. By conditioning the assignment "subject to our ownership hereto," Peer did not intend to retain prospective ownership rights, but merely reserved its right on any copies which may have been previously published without incurring liability.

"Hereto" simply meant "heretofore." Moreover, Lincoln's 1951 assignment to Mrs. Rosette conveyed to Mrs. Rosette the interest in the copyright of Mother Goose Party which Lincoln acquired upon the reassignment in 1955 by Peer. The intent of the parties was clearly to transfer whatever title Lincoln may have or may acquire. This is particularly evident in light of the fact that Mrs. Rosette and her husband were the owners of Lincoln Records and that Mrs. Rozette, in return for the copyright assignments, granted to Lincoln Records in 1951 "the non-exclusive, irrevocable right and license to reproduce" her compositions.

As to count 42, the defendants state that evidence of the reassignment of Katie the Kangaroo by Shawnee Press to Mrs. Rosette on August 31, 1960 was insufficient to establish ownership of that copyright since Paull-Pioneer, not Shawnee, was the original copyright registrant. At the trial decision was reserved on the admissibility of the Shawnee letter. It will be accepted in evidence. That document expressly states that Shawnee acquired this copyright by assignmentfrom Paull-Pioneer. It was not necessary for the plaintiffs to introduce in addition the document constituting the assignment from Paull-Pioneer to Shawnee. Absent any proof to the contrary, the plaintiff has

established by a preponderance of the evidence that she is the copyright proprietor of Katie the Kangaroo, the subject of count 42 of the complaint.

The plaintiff's ownership of the thirty-one remaining copyrights is not challenged.

STATUTE OF LIMITATIONS

Since I have held that the only recovery that can be had is on the statutory copyrights (including the common law copyrights that were later registered) the statute of limitations provided in the Copyright Act applies. That statute provides that no action may be maintained "unless the same is commenced within three years after the claim accrued" (17 U.S.C. §115(b)).

This litigation was commenced on November 15, 1966. The date of accrual is the date of filing the notice of use. The earliest notice of use filed by the plaintiff is January 25, 1961 and the latest February 9, 1963. Any infringement more than three years before the commencement of the action (November 15, 1963) is barred by limitation, as is any infringement prior to filing a notice of use as decided herein.

Accordingly, the defendants Rainbo Record Manufacturing Corporation and Jack Brown will account for the period

not time barred either by limitation or failure to file notice of use with respect to each record sold of a copyrighted composition of the plaintiff under the labels of Carousel and Playtime. Upon such accounting the defendants will pay to the plaintiff a royalty of two cents per record sold and a further sum of three times thereof.

The foregoing constitutes the findings of fact and conclusions of law pursuant to Fed.R.Civ.P. 52(a).

A Master will be appointed to preside over the accounting unless the parties can agree to a stipulated sum twenty-one days from the date hereof. No costs are awarded at this time.

Submit ~~order~~ on notice.

M. I. Gurfein

U.S.D.J.

Dated: February 26, 1973.

FOOTNOTES

1/ 13, 18, 19, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 27, 38, 39 and 40. The plaintiff concedes prior publication as to eighteen of these counts, contesting only counts 13 and 23 as to which she claims that no recording was released prior to registration. Because the defendants have failed to offer any proof of prior publication on counts 13 and 23, I find for the plaintiff on this matter.

2/

Title	Date of Copyright	Recording	Notice of Use
1. Sleepy Time Dolly	5/12/49	1/4/49	1/25/61
2. Night Song for Little One	5/12/49	1/24/49	1/25/61
3. Cowboy's Old Horse	1/31/51	7/27/50	1/25/61
4. Wynken, Blynken & Nod	1/31/51	7/25/50	1/25/61
5. Old Mother Hubbard	5/12/49	2/15/49	1/25/61
6. Monkey Who Wanted to Fly	5/12/49	?	1/25/61
7. Santa Claus is Flying Thru The Sky	1/31/51	7/25/50	1/25/61
8. Hobbledy Horse	5/12/49	?	1/25/61
9. Charlie Had a Choo-Choo (Runaway Choo-Choo)	5/12/49	2/17/49	1/25/61
10. Rapunzel	1/31/51	7/26/50	1/25/61
11. The Frog and the Ox	5/12/49	2/15/49	1/25/61
12. The Lion and the Mouse	5/12/49	1/24/49	1/25/61
13. Chicken Licken	1/31/51	2/15/49	1/25/61
14. The Weez Wump	5/12/49	?	1/25/61
15. The Pied Piper	5/23/49	?	1/25/61
16. Funny Bunny	5/12/49	1/4/49	1/25/61
17. Shoemaker and the Elves	5/12/49	2/15/49	1/25/61
18/[illegible] Pussy Cat, Pussy Cat	12/23/64	8/21/51	2/9/65
20. Little Red Hen	5/12/49	?	1/25/61
21. The Fisherman and the Flounder	5/12/49	2/17/49	1/25/61
22. Paddy the Bakery Boy	5/12/49	2/17/49	1/25/61
23. Jack and the Beanstalk	1/31/51	5/9/49	1/25/61
24. Brave Little Sambo	5/12/49	1/24/49	1/25/61
25/26 Pinnarbio	12/31/63	6/5/52	3/20/64
27. Mary Had a Little Lamb	9/12/63	8/16/51	10/21/63
29/30 Ding Dong Bell	9/4/62	9/30/49	10/21/63
31/32 Fiddle-De Dee (Fly & the Bumble-bee)	12/23/64	8/17/51	2/9/65
33/34 Goosy Goosy Gander	9/12/63	8/16/51	10/21/63

Title	Date of Copyright	Recording	Notice of Use
35/36 Where Has My Little Dog Gone	9/4/62	8/10/51	10/21/63
37/38 Alice In Wonderland	3/2/64	6/5/52	3/20/64
39/40 Old King Cole	3/2/64	8/17/51	3/20/64
41. Mother Goose Party	1/2/51	?	1/25/61
42. Katie the Kangaroo	5/26/49	?	1/25/61

Counts 17, 21, 22, 23, 24, 37, 38, 39 and 40 are reproduced in Playtime Album 112; Counts 1, 15, 41 are in Carousel Album 806; Counts 6, 7, 25 and 26 are in Playtime Album 109; Counts 8 and 9 are in Playtime Album 111; Counts 31 and 32 are in Playtime Album 116; Count 10 is in Playtime Album 117; Counts 11, 12 and 42 are in Playtime Album 110; Counts 4, 5 and 41 are in Playtime Album 106; Counts 1, 25, 26, 27, 14, 29 and 30 are in Carousel Album 807; Counts 3, 6, 13, 20, 33 and 34 are in Carousel Album 808; Counts 15, 7, 16, 8, 9 and 17 are in Carousel Album 812; Counts 1, 2 and 3 are in Playtime Album 107; Counts 16, 27, 18 and 19, 33 and 34, 13, 14, 20, 35 and 36, 29 and 30 are in Playtime Album 108.

3/ Taback died in 1964.

4/ Arthur E. Farmer: "Report to Section of Patent, Trademark and Copyright Law of American Bar Association," September 15, 1952, at p. 11;
John Schulman: "A Realistic Treaty," The American Writer, Vol. 1, No. 218, at p. 23 (November 1952);
Sydney M. Kaye; "Duration of Copyright and the Concept of Dedication," Bulletin of the Copyright Society of the U.S.A., Vol. 2, No. 4, p.93 at pp. 95-96 (February 1955).

5/ Tannenbaum, supra; Schulman, supra; McDonald, "The Law of Broadcasting" Id. at 31; Burton, supra.

6/ The lament was loud and clear. JosephA. McDonald in his lecture on "The Law of Broadcasting" in 7 Copyright Problems Analyzed, supra, at 46 relates: "I was quite cast down about that, and in all the beaneries where the copyright bar eats, you could overhear remarks such as 'Have you heard what Judge Igoe did? What can we do? Someone ought to try for a rehearing.' Et cetera, et cetera."

7/ The Second Circuit in RCA Mfg. Co. Inc. V. Whiteman, 114 F.2d 86, cert. denied, 311 U.S. 173 (1940) and Capitol Records Inc. v. Mercury Records Corp., 221 F.2d 657 (1955) dealt with performer's rights in phonograph records where the musical composition was not owned by the performer. That is a different question and does not deal with "publication" of an unpublished musical composition.

8/ While copyright registration by publication with notice of copyright (§10) requires the prompt deposit in the Copyright Office of two complete copies of the best edition, the Copyright Office Rules provided that "[a] phonograph record or other sound recording is not considered a copy of the compositions recorded on it, and is not acceptable for copyright registration." Rules and Regulations of the Copyright Office, 37 C.F.R. 202.8(b). A phonograph record is not a copy of the musical composition itself. But note the Copyright Act was amended on October 15, 1971 to provide that sound recordings may now qualify for copyright protection. Pub.L.92-140, 85 Stat. 391.

9/ Professor Nimmer has suggested a more complete divestment of the common law rights upon grounds with which I do not agree as appears from this opinion. His consideration of the Sears-Compco doctrine in relation to the problem at hand is, however, provocative and novel. See Nimmer, supra, §59. His discussion of the effect of the 1971 Amendment to the Copyright Act (Pub.L.No.92-140; 85 Stat. 391; 17 U.S.C. §§1, 5, 19, 20, 26, 101) on the Sears-Compco doctrine is interesting as well. Nimmer, Id. §35.225. I incline to the view that Congress in the Sound Recording Amendment was concerned with performance on phonograph records and not with the musical composition itself as an unpublished work under State law. "The copyrighted work" is the "sound recording"--17 U.S.C. §1(f) and the proviso that the Amended Copyright Act shall not be applied retroactively refers only to "sound recordings," i.e. the performance of musical works rather than the unpublished musical work. Pub.L.92-140, 85 Stat. 392 §3.

JUDGMENT APPEALED FROM (Filed January , 1975)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARION ROSETTE, :

Plaintiff, :

-against- : 66 Civ.3864 (HFW)

RAINBO RECORD MANUFACTURING CORPORATION and HAROLD E. MARKOWITZ and JACK BROWN doing business as RAINBO RECORD COMPANY, a partnership, : JUDGMENT

Defendants. :

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The Honorable Murray I. Gurfein having granted in part and denied in part the defendants' application to amend the answer to the complaint for the reasons stated in the transcript of the minutes of the trial on October 10, 1972 (pp. 1-16(a)), and this cause having duly come on for trial on the 10th and 11th days of October, 1972, and proof having been presented on behalf of the representative parties, and the parties having appeared by their respective attorneys, and the Court being fully advised in the premises, and an opinion dated February 26, 1973, having been rendered by Judge Gurfein, and findings of fact and conclusions of law having been made therein by Judge Gurfein under the same date, and by Interlocutory Judgment entered April 12, 1973, Magistrate Martin D. Jacobs having been appointed Special Master to take evidence and compute and pass upon an accounting of Plaintiff's damages as directed in said Interlocutory Judgment, and a

hearing having been held before Magistrate Jacobs on January 30 and 31, 1974, and proof having been presented on behalf of the respective parties, and the parties having been represented by their respective attorneys, and a Report having been rendered by Magistrate Jacobs dated May 22, 1974, and said Report having been confirmed by Judge Murray I. Gurfein, it is hereby

ORDERED, ADJUDGED AND DECREED:

1. That the plaintiff complied with the copyright laws of the United States and is the owner of good, valid, and subsisting copyrights with regard to each of the musical compositions in suit;

2. That the Defendants Rainbo Record Manufacturing Corporation and Jack Brown have infringed upon and violated said copyrights by making and selling phonograph recordings of Plaintiff's musical compositions in suit without authorization of Plaintiff or the payment to Plaintiff of royalties;

3. That the said Defendants, Rainbo Record Manufacturing Corporation and Jack Brown, and each of them, their officers, agents, attorneys, servants and employees, and all acting by, through, under or in concert with them, in any manner whatsoever whether directly or indirectly, be and they hereby are perpetually restrained and enjoined from in any manner or form, directly or indirectly, reproducing, copying, imitating, duplicating, or otherwise infringing the said copyrighted musical compositions of the Plaintiff, and from selling, disposing of or otherwise turning to account any and all of said infringing phonograph recordings;

4. That the aforementioned Defendants and each of them deliver upon oath on or before the 14th day of February, 1975, to the ~~Clerk~~ U.S Marshall of United States District Court for the Southern District of New York, at his office in the United States Court House, Foley Square, New York City, all of the copies and mechanical reproductions in their possession or under their control which infringe Plaintiff's copyrights, and all plates, molds, stampers, masters, matrices, tapes and all other instruments or devices for making infringing copies or mechanical reproductions of Plaintiff's aforesaid musical compositions;

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5. That the Plaintiff recover from the Defendants Rainbo Record Manufacturing Corporation and Jack Brown, jointly as joint tortfeasors, and severally, the sum of $14,300 with interest from July 1, 1964;

6. That the Plaintiff further recover from the Defendants, jointly as joint tortfeasors, and severally, attorneys fees for the services of Plaintiff's attorneys in this cause, in an amount to be fixed by this court;

7. That the Plaintiff recover from the Defendants her costs and disbursements of this suit, to be taxed by the Clerk of this Court; and

8. That jurisdiction of this suit is retained for the purposes of making any further orders to effectuate this

judgment and to determine the attorney's fees to be awarded to the Plaintiff, and any further order necessary or proper to be made in final adjustment and settlement of this controversy.

Dated: January 29th ,1975.
at New York, N.Y

/S/ HENRY F. WERKER
UNITED STATES DISTRICT JUDGE

Judgment Entered 2-1-75
Raymond F Burghardt
Clerk

COURT OF APPEALS
FOR THE SECOND CIRCUIT

MARION ROSETTE,

Plaintiff-Appellee,

- *against* -

RAINBO RECORD MANUFACTURING CORP. Etal.,

Defendants-Appellants.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF New York *ss.:*

I, Victor Ortega, *being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at* 1027 Avenue St. John, Bronx, New York
That on the 16th *day of* June 1975 *at* 270 Madison Ave, N.Y., N.Y.

deponent served the annexed Appendix *upon*

Zissu Marcus Stein & Couture

the Attorneys *in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the* Attorney(s) *herein.*

Sworn to before me, this 16th
day of June 1975

Robert T. Brin

Victor Ortega
VICTOR ORTEGA

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977